SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 73

UNITED STATES, Appellant,

vs.

GRINNELL CORPORATION, ET AL.

No. 74

GRINNELL CORPORATION, Appellant,

vs.

UNITED STATES

No. 75

AMERICAN DISTRICT TELEGRAPH COMPANY, Appellant,

vs.

UNITED STATES

No. 76

HOLMES ELECTRIC PROTECTIVE COMPANY, Appellant,

vs.

UNITED STATES

No. 77

AUTOMATIC FIRE ALARM COMPANY OF DELAWARE, Appellant,

vs.

UNITED STATES

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

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No. 128—Agreement dated March 29, 1954 between ADT, Grinnell and the Rhode Island Electric Protective Company	2205	1528
No. 129—Agreement dated March 29, 1954 between ADT and the Rhode Island Electric Protective Company	2212	1534
No. 130—Memorandum from ADT Vice President J. A. MacDonald to ADT Secretary John Hannon dated December 10, 1953	2218	1540
No. 131—Letter from ADT Vice President A. E. Smith to President H. G. Clark of the Rhode Island Electric Protective Company dated December 11, 1958	2220	1542
No. 132—Letter from Rhode Island Electric Protective Company President H. G. Clark to ADT, dated February 5, 1963	2221	1543
No. 133—Letter from Rhode Island Electric Protective Company President H. G. Clark to Grinnell, dated January 19, 1961	2223	1545
No. 139—Memorandum from ADT District Sales Manager E. J. Heisley to ADT General Sales Manager L. J. O'Brien, captioned, Competition-Washington District, dated September 14, 1956	2224	1546
No. 140—Memorandum from ADT Superintendent of Field Service R. T. Warner to ADT General Commercial Manager A. E. Smith, captioned, Competition-Milwaukee, dated May 19, 1953	2227	1549
No. 141—Memorandum from ADT District Sales Manager W. K. Francis to ADT General Sales Manager L. J. O'Brien, captioned, Competition-Paramount Pictures Corporation, Los Angeles, California, dated August 10, 1956	2229	1550
No. 142—Memorandum from ADT District Sales Manager W. K. Francis to ADT General Sales Manager L. J. O'Brien, captioned, Paramount Pictures Corporation, Los Angeles, California, dated May 9, 1957	2230	1552
No. 143—Memorandum from ADT Assistant to General Sales Manager W. W. Dooley entitled, Report on Survey of Sales Potential, San Jose Peninsula, (Not dated)	2232	1554
No. 144—Memorandum from ADT District Managers to ADT General Managers, captioned, Competition-Peoria, Illinois, dated December 12, 1955	2235	1556

Record from the United States District Court for the District of Rhode Island—Continued

	Original	Print
GOVERNMENT'S EXHIBITS—Continued		
No. 145—Handwritten confidential memoranda from ADT Representative W. Rohlfing captioned Call's Police Signal, Chelsea, Massachusetts, dated July 16, 1956	2238	1559
No. 146—Memorandum from ADT District Sales Manager R. T. Warner to ADT Vice President A. E. Smith, captioned, Call's Police Signal Corporation, Chelsea, Mass., dated September 24, 1956	2242	1561
No. 147—Memorandum (unsigned) to ADT District Sales Manager E. Turnbull, captioned, Competition; Merchants Police, Milwaukee, Wisconsin, dated July 30, 1955	2243	1562
No. 148—Memorandum from ADT Sales Representative R. P. Lucy to ADT District Sales Manager W. K. Francis, captioned Competition-Bay Burglar Alarm Company, dated March 28, 1958	2245	1564
No. 149—Memorandum from ADT District Sales Manager W. K. Francis to ADT Commercial Superintendent E. B. White, captioned General Plant Protection Company, Los Angeles, California, dated May 15, 1952	2246	1565
No. 150—Memorandum from ADT District Managers to ADT General Managers, captioned Proposed Central Station-Anaheim (Orange County) California, dated July 26, 1960	2247	1567
No. 151—Memorandum from ADT General Superintendent, Operating Department to ADT Vice President J. A. MacDonald, captioned, Proposed Central Station, San Jose, California, dated March 24, 1959	2250	1570
No. 152—Memorandum from ADT General Superintendent of Plant W. Hable to ADT General Sales Manager L. J. O'Brien, captioned, Proposed Central Station-San Jose, California, dated March 20, 1959	2251	1571
No. 153—Memorandum from ADT District Managers to ADT General Managers, captioned Proposed Central Station-San Diego, California, dated March 4, 1959	2252	1572
No. 154—Memorandum from ADT Vice President A. E. Smith to ADT Vice President J. A. MacDonald dated August 3, 1960	2254	1575

Record from the United States District Court for the District of Rhode Island—Continued

	Original	Print
GOVERNMENT'S EXHIBITS—Continued		
No. 155—Memorandum from ADT President E. Gaston to ADT Vice President J. A. MacDonald, captioned, Proposed New Central Station-San Fernando Valley-Los Angeles, California, dated July 12, 1961	2256	1576
No. 156—Memorandum from ADT Vice President A. E. Smith to ADT Vice President J.A. MacDonald, captioned Proposed New Central Station, Huntington Park, Los Angeles, dated June 3, 1952	2258	1578
No. 157—Memorandum from ADT District Managers to ADT General Managers, captioned Proposed Central Station, New Brunswick, New Jersey, dated July 13, 1959 (excerpts)	2261	1581
No. 158—Memorandum from ADT Executive Account Representative F. J. Concannon to ADT General Sales Manager L. J. O'Brien, captioned, New Central Station, Nassau County, Long Island City, N.Y., dated August 17, 1955	2264	1583
No. 159—Memorandum from ADT Vice President J. A. MacDonald to ADT General Commercial Manager A. E. Smith, captioned, Possible Establishment of Central Station at Jamaica, Long Island, dated April 14, 1952	2267	1585
No. 160—Memorandum from ADT District Managers to ADT General Managers, captioned, Proposed New Central Station, San Fernando Valley, dated July 26, 1960	2268	1587
No. 161—Memorandum from ADT District Plant Superintendent J. F. Burns to W. Hable, captioned, Proposed sub-divisions of existing Central Stations-New York District, dated December 2, 1958	2271	1592
No. 163—Memorandum from ADT Director of Diversification & Expansion J. J. Stephens to ADT Vice President A. E. Smith, captioned, Sales Potential, Westchester County, New York, dated December 20, 1957	2274	1594
No. 164—Memorandum from ADT Vice President to ADT President Gaston, captioned, Charlotte, North Carolina, dated July 6, 1960	2279	1599
No. 167—Memorandum from ADT First Vice President J. A. MacDonald to ADT Controller C. G. Eicker, captioned, Rate Development, dated July 12, 1956	2282	1602
No. 168—Memorandum by ADT Vice President J. A. MacDonald, captioned, Rate Adjustment 1959, dated November 10, 1959	2284	1605

Record from the United States District Court for the District of Rhode Island—Continued

	Original	Print
GOVERNMENT'S EXHIBITS—Continued		
No. 169—Memorandum from ADT First Vice President J. A. MacDonald to ADT Vice President A. E. Smith, captioned, Minimum Basic Annual Service Charges, dated December 22, 1959	2286	1608
No. 170—Memorandum from ADT President E. Gaston to ADT First Vice President J. A. MacDonald, captioned Rate Development, dated July 11, 1956	2289	1611
No. 171—Memorandum by Holmes President H. C. Ward, entitled, Holmes Electric Protective Company of Philadelphia, Proposed 1957 Electric Protective Service Rate Revision, dated February 18, 1957 (excerpts)	2291	1612
No. 172—Memorandum by Holmes President H. C. Ward, entitled, Revision of Electric Protective Service Rates Proposed for Adoption for Mercantile and Residence Services, May 1, 1953, and for Financial Institution Service June 1, 1953, dated February 25, 1953	2296	1617
No. 173—Memorandum for File (unsigned) captioned, Projected Cash Resources and their Application, Five year Period ending December 31, 1963	2297	1619
No. 174—Memorandum from ADT District Sales Manager E. Turnbull to ADT General Sales Manager L. J. O'Brien, captioned Sales Production-Integrity of Service Charges, dated September 17, 1957	2302	1626
Exhibit Volume III		
No. 175—Contract Data Reports and Competition Reports for Albany, New York (excerpts)	2304	1629
No. 176—Contract Data Reports for Atlanta, Georgia (excerpts)	2316	1635
No. 177—Contract Data Reports and Competition Reports for Boston, Massachusetts (excerpts)	2323	1642
No. 178—Contract Data Reports for Buffalo, New York (excerpts)	2350	1665
No. 179—Contract Data Reports and Competition Reports for Chicago, Illinois (excerpts)	2368	1677
No. 180—Contract Data Reports and Competition Reports for Cincinnati, Ohio (excerpts)	2398	1700
No. 181—Contract Data Reports and Competition Reports for Cleveland, Ohio (excerpts)	2418	1716

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Record from the United States District Court for the District of Rhode Island—Continued		
GOVERNMENT'S EXHIBITS—Continued		
No. 182—Contract Data Reports and Competition Reports for Dallas, Texas (excerpts)	2445	1738
No. 183—Contract Data Reports and Competition Reports for Dayton, Ohio (excerpts)	2470	1755
No. 184—Contract Data Reports and Competition Reports for Denver, Colorado (excerpts)	2486	1766
No. 185—Contract Data Reports and Competition Reports for Detroit, Michigan (excerpts)	2500	1780
No. 186—Contract Data Reports and Competition Reports for Houston, Texas (excerpts)	2515	1790
No. 187—Contract Data Reports and Competition Reports for Indianapolis, Indiana (excerpts)	2527	1801
No. 188—Contract Data Reports and Competition Reports for Los Angeles, California (excerpts)	2551	1813
No. 189—Contract Data Reports for Louisville, Kentucky (excerpts)	2566	1823
No. 190—Contract Data Reports for Memphis, Tennessee (excerpts)	2576	1831
No. 191—Contract Data Reports and Competition Reports for Milwaukee, Wisconsin (excerpts)	2589	1839
No. 192—Contract Data Reports and Competition Reports for Minneapolis, Minnesota (excerpts)	2619	1855
No. 193—Contract Data Reports and Competition Reports for Newark, New Jersey (excerpts)	2632	1864
No. 194—Contract Data Reports for New Orleans, Louisiana (excerpts)	2644	1872
No. 195—Contract Data Reports and Competition Reports for New York, New York (excerpts)	2653	1879
No. 196—Contract Data Reports for Omaha, Nebraska (excerpts)	2670	1895
No. 197—Contract Data Reports and Competition Reports for Peoria, Illinois (excerpts)	2678	1901
No. 198—Contract Data Reports and Competition Reports for Philadelphia, Pennsylvania (excerpts)	2686	1906
No. 199—Contract Data Reports for Portland, Oregon (excerpts)	2696	1915
No. 200—Contract Data Reports and Competition Reports for San Francisco, California (excerpts)	2704	1922
No. 201—Contract Data Reports for Seattle, Washington (excerpts)	2710	1928
No. 202—Contract Data Reports and Competition Reports for St. Louis, Missouri (excerpts)	2720	1935
No. 203—Contract Data Reports and Competition Reports for Washington, D. C. (excerpts)	2731	1945

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Record from the United States District Court for the District of Rhode Island—Continued		
GOVERNMENT'S EXHIBITS—Continued		
No. 206—Report on ADT General Sales Meeting April 6, 7 and 8, 1955, at the New York Athletic Club	2748	1961
No. 208—Memorandum from ADT Vice President to ADT President E. Gaston, captioned, Service Charges—Proposed Revision, dated November 24, 1954	2778	2003
No. 209—Memorandum for File by ADT Vice President J. A. MacDonald, captioned, Rate Development, dated November 17, 1955	2780	2006
No. 210—Memorandum for File by ADT Vice President, J. A. MacDonald, captioned, Rate Adjustments 1959, dated November 10, 1959	2784	2012
No. 212—Directive issued by ADT Vice President A. E. Smith and Concurred in by ADT President E. Gaston to ADT District Sales Managers, captioned, Delegation of Authority, with Supplement, issued on July 1, 1960	2785	2013
No. 213—Memorandum from ADT President E. Gaston to ADT General Sales Manager L. J. O'Brien, captioned R. H. Macy, Paramus, N. J., dated December 29, 1955	2791	2020
No. 214—Memorandum from ADT Sales Representative D. M. Gates to ADT Executive Accounts Representative Alex Gaston, captioned, McAlpin Company, Cincinnati, Ohio, dated April 25, 1958	2792	2021
No. 215—Memorandum from ADT Commercial Superintendent J. B. Bodley to ADT General Sales Manager A. E. Smith, captioned, Federal Engineering Co., Inc., Washington, D. C., dated November 14, 1952	2793	2022
No. 216—Memorandum from ADT General Sales Manager L. J. O'Brien to ADT District Sales Manager W. J. Robinson, captioned, Competition, Fidelity Electronics Protective Service, Pittsburgh, Pensylvania, dated March 14, 1961	2794	2023
No. 217—Memorandum from ADT District Sales Manager E. J. Heisley to ADT General Sales Manager L. J. O'Brien, captioned, National Protective Corporation, Baltimore, Maryland, dated October 27, 1960	2795	2024
No. 218—Memorandum from ADT District Sales Manager E. Turnbull to ADT General Sales Manager L. J. O'Brien, captioned, Competition—Autocall and Automatic Alarm, Minneapolis, Minnesota, dated March 13, 1959	2796	2025

Record from the United States District Court for the District of Rhode Island—Continued

	Original	Print
GOVERNMENT'S EXHIBITS—Continued		
No. 219—Memorandum from ADT District Sales Manager J. D. Patton to ADT General Sales Manager L. J. O'Brien, captioned, Competition—Fort Worth, dated December 22, 1958	2799	2028
No. 220—Memorandum from ADT Sales Representative R. W. Rice to ADT District Sales Manager J. D. Patton, captioned, New District Account—Letellier-Phillips Paper Co., New Orleans, La., dated January 14, 1960	2800	2029
No. 221—Memorandum from ADT District Sales Manager E. J. Heisley to ADT Sales Representative L. F. Lytle, captioned, Reliable Stores Corp., Washington, D. C., dated November 22, 1960	2802	2031
No. 222—Comparative Summary of Percentages of Minimum Basic Charges Secured at each ADT central station in the United States for the years 1957 through 1961	2804	2033
No. 223—Memorandum from ADT District Sales Manager A. S. Jacks to ADT General Sales Manager L. J. O'Brien, captioned, Competition—Dayton, Ohio, Liberal Markets, Inc., dated August 8, 1961	2811	2039
No. 224—Memorandum from ADT Commercial Superintendent J. B. Bodley to ADT General Commercial Manager A. E. Smith, captioned, Federal Engineering Co., Washington, D. C., dated June 9, 1953	2813	2041
No. 225—Memorandum from ADT General Sales Manager L. J. O'Brien to ADT District Sales Manager J. K. Scott, captioned, York Professional Pharmacy, Los Angeles, California, dated July 15, 1960	2814	2042
No. 227—Memorandum from ADT District Sales Manager E. J. Heisley to ADT General Sales Manager L. J. O'Brien, captioned, Competition (rumored) Philadelphia, Pennsylvania, dated October 22, 1957	2815	2043
No. 228—ADT central station protection service Contract Forms for Watchman's Reporting and Manual Fire Alarm Service, Automatic Fire Alarm Service, Sprinkler Supervisory and Waterflow Alarm Service and Burglary and Holdup Protection Service	2818	2047
No. 229—Memorandum from ADT District Sales Manager C. L. Chafee to ADT Vice President A. E. Smith, captioned, Regional Sales Conferences and District Sales Meeting 1955, dated February 18, 1955	2822	2055

	Original	Print
Record from the United States District Court for the District of Rhode Island—Continued		
GOVERNMENT'S EXHIBITS—Continued		
No. 230—Memorandum from ADT Controller C. G. Eicker to ADT First Vice President J. A. MacDonald, captioned, Tampa, Florida, dated September 11, 1961	2823	2057
No. 231—Memorandum from ADT Vice President J. A. MacDonald to ADT Controller C. G. Eicker, captioned, Advance Service Charge for Sprinkler Supervisory and Waterflow Alarm Services, dated August 5, 1953	2828	2063
No. 232—Memorandum (unsigned) entitled, Charges Proposed by Commercial Department for all types of Sprinkler Supervisory and Waterflow Alarm Service and Waterflow Only Service (not dated)	2829	2064
No. 233—Memorandum from ADT Controller C. G. Eicker to ADT First Vice President J. A. MacDonald, captioned, Rate Development, dated July 18, 1958	2833	2069
No. 234—Memorandum from ADT Controller C. G. Eicker to ADT First Vice President J. A. MacDonald, captioned, Rate Development, dated August 30, 1956	2835	2070
No. 235—ADT Tabulation (unsigned) entitled, Proposed Revision in Advance Service Charges 8/28/56	2837	2074
No. 236—Annual Report of the Holmes Electric Protective Company and Subsidiaries for the year 1960 (excerpts)	2840	2075
No. 237—Memorandum from ADT Commercial Superintendent E. O. Betscher to ADT General Commercial Manager A. E. Smith, dated May 25, 1951	2845	2076
No. 238—Memorandum from ADT President E. Gaston to ADT General Sales Manager R. Brechbill, captioned, Owl Protective Company, Long Island City, N.Y., dated November 7, 1962	2847	2079
No. 239—Memorandum for File by ADT Vice President AES, captioned, Competition, Call's Police Signal Co., Chelsea, Massachusetts, dated July 26, 1956	2848	2080
No. 240—Memorandum from ADT General Sales Manager L. J. O'Brien to ADT District Sales Manager A. S. Jacks, captioned, Competition, Buffalo, New York, dated September 8, 1959	2850	2082

Record from the United States District Court for the District of Rhode Island—Continued

	Original	Print
GOVERNMENT'S EXHIBITS—Continued		
No. 241—Memorandum from ADT District Sales Manager R. T. Warner to ADT General Sales Manager L. J. O'Brien, captioned, Cole-Hersee Company, South Boston, Massachusetts, dated September 29, 1958	2851	2082
No. 242—Memorandum from ADT Sales Representative G. V. Roach to ADT Assistant to General Sales Manager R. Brechbill, captioned, Quality Wool Quilting Corp., Astoria, New York, dated August 8, 1961	2853	2084
No. 243—Memorandum from ADT District Sales Manager E. J. Heisley to ADT Special Representative H. E. May, captioned, Bellevue Stratford Hotel and Benjamin Franklin Hotel, Philadelphia, Pa., dated September 23, 1960	2854	2085
No. 244—Memorandum from ADT Sales Representative R. F. Michiel, Sr., to ADT District Sales Manager E. Turnbull, captioned, Request for Competitive Quotation to Secure Agreement for SS & WFA with a new Subscriber, Milwaukee Forge and Machine Company, dated July 2, 1959	2855	2086
No. 245—Memorandum from ADT District Sales Manager R. T. Warner to ADT General Sales Manager L. J. O'Brien, captioned, Raymond's, Inc., South Boston, Mass., dated August 9, 1958	2857	2088
No. 246—Memorandum from AFA Commercial Representative J. J. Way to AFA Vice President L. W. Thomason, captioned, Morris Fishman & Sons, Inc., Philadelphia, Pa., dated November 13, 1957	2859	2090
No. 247—Memorandum from ADT Special Representative F. E. Miller to ADT District Sales Manager E. Turnbull, captioned, Continental Can Company, Milwaukee, Wisconsin, dated March 20, 1959	2860	2091
No. 248—Memorandum from ADT Sales Representative A. A. Balestrino to ADT District Sales Manager A. S. Jacks, captioned, Hyde Park Lumber Co., Cincinnati, Ohio, dated July 28, 1960	2862	2092
No. 250—Memorandum from ADT District Sales Manager E. J. Heisley to ADT General Manager L. J. O'Brien, captioned, Nationwide Safti Brake Co., Falls Church, Virginia, dated April 17, 1959	2863	2094
No. 251—Memorandum from ADT Sales Representative C. J. Lawson to ADT District Sales Manager D. R. Hall, dated January 14, 1958	2865	2096

	Original	Print
Record from the United States District Court for the District of Rhode Island—Continued		
GOVERNMENT'S EXHIBITS—Continued		
No. 252—Memorandum from ADT First Vice President J. A. MacDonald to ADT President E. Gaston, captioned, Malcolm Goldstone, Owl Protective Co., dated February 9, 1962	2866	2097
No. 253—Memorandum from ADT District Sales Manager J. K. Swanson to ADT General Sales Manager L. J. O'Brien, captioned, Wright-Bachman, Inc., Indianapolis, Indiana, dated September 11, 1961	2869	2099
No. 254—Memorandum from ADT Sales Representative W. J. King to ADT Special Representative H. E. May, captioned, Philco Distributors, Inc., Milwaukee, Wisconsin, dated February 18, 1960	2870	2100
No. 255—Memorandum from ADT Sales Representative B. W. Henke to ADT Executive Accounts Representative F. J. Concannon, captioned, American Brass Company, Cleveland, Ohio, dated April 19, 1956	2872	2101
No. 256—ADT General Instructions No. 77, entitled, Contract Procedures, issued July 11, 1960	2874	2103
No. 257—Memorandum from ADT Special Representative J. R. Norris to ADT Commercial Superintendent C. L. Chafee, captioned, National Can Corp., Cleveland, Ohio, dated July 23, 1954	2878	2110
No. 258—Memorandum from ADT Sales Representative S. J. Sievers to ADT Executive Accounts Representative H. Schultz, captioned, Foley's, Houston, Texas, dated September 22, 1960	2879	2112
No. 259—Memorandum from ADT Sales Representative J. P. Dunn to ADT National Accounts Representative F. J. Concannon, captioned, Johns-Manville Corp., Los Angeles, California, dated June 18, 1958	2880	2113
No. 260—Letter from A. F. Greenwood of Government Employees Exchange, Inc., to D. R. White, Albany Protective Service, Albany, New York, dated August 7, 1961	2881	2114
Exhibit Volume IV		
No. 261—Memorandum from ADT Manager, Field Service Division, R. Brechbill to ADT General Manager of Sales Production L. J. O'Brien, captioned, Procter & Gamble Company, Cincinnati, Ohio, Cleveland District National Account, dated September 1, 1955	2882	2115

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Record from the United States District Court for the District of Rhode Island—Continued		
GOVERNMENT'S EXHIBITS—Continued		
No. 264—Memorandum from ADT Sales Representative J. D. Patton to ADT Executive Accounts Representative F. J. Concannon, captioned, Franklin's, Dallas, Texas, dated December 12, 1956	2884	2117
No. 265—Memorandum by ADT Vice President A. E. Smith to File, captioned, Renewal Agreement, R.K.O. Pictures, Los Angeles, California, dated June 29, 1956	2885	2118
No. 266—Memorandum from ADT District Sales Manager R. T. Warner to ADT General Sales Manager L. J. O'Brien, captioned, The Van Heusen Charles Co., Albany, New York, dated June 25, 1959	2886	2119
No. 267—Memorandum from ADT Special Representative H. E. May to ADT Executive Accounts Representative F. Concannon, captioned, American Sugar Refining Company, Philadelphia, Pennsylvania, dated December 12, 1961	2887	2120
No. 268—Contract agreement for Alarm Engineering Service of the Dayton Electronics Alarm and Signal Co., 530 West Second Street, Dayton 2, Ohio	2889	2121
No. 269—Memorandum from ADT Special Representative H. E. May to ADT Executive Accounts Representative F. J. Concannon, dated January 18, 1960 (excerpts)	2891	2123
No. 270—Memorandum from ADT Special Representative H. E. May to ADT Sales Representative F. Shadell, captioned, Swern & Company-Lit Brothers, Trenton, dated January 5, 1962	2897	2124
No. 271—Memorandum from ADT District Sales Manager E. J. Heisley to ADT General Sales Manager L. J. O'Brien, captioned, City Stores, Inc., Philadelphia, Pa., dated January 19, 1960	2898	2125
No. 275—Memorandum from ADT District Sales Manager L. M. De Shane to ADT General Sales Manager L. J. O'Brien, captioned, Ralston Purina Company, Various Locations, U.S.A., dated March 4, 1957	2901	2128
No. 276—Annual Report of the American District Telegraph Company for Fiscal Year 1953 (excerpts)	2903	2129

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Record from the United States District Court for the District of Rhode Island—Continued		
GOVERNMENT'S EXHIBITS—Continued		
No. 277—Letter from ADT Vice President J. A. MacDonald to Grinnell Secretary and Counsel R. T. Clapp, dated July 2, 1953	2915	2132
No. 278—ADT General Circular No. 222, entitled, Direct-Connected Fire and Burglar Alarm Service, signed by ADT Vice President A. E. Smith, dated April 27, 1955	2918	2135
No. 279—Memorandum from ADT General Commercial Manager A. E. Smith to ADT Commercial Superintendent C. L. Chafee, captioned, Competition—Automatic Fire Alarm Systems, Columbus, Ohio, dated March 9, 1953	2924	2149
No. 280—Memorandum from ADT Assistant Director of Public Relations R. M. Bugbee to ADT Director of Public Relations A. W. Sullivan, captioned, Proposed Ordinance—City of Newark, dated December 20, 1962	2928	2153
No. 281—Memorandum from ADT District Sales Manager E. J. Heisley to ADT General Sales Manager L. J. O'Brien, captioned, Competition, Atlanta, Georgia, dated September 15, 1955	2934	2157
No. 282—Memorandum from ADT Assistant Commercial Superintendent, W. K. Francis to ADT General Commercial Manager A. E. Smith, captioned, Regional Conferences, June 4-6 and 18-20, 1953, Competition District No. 9, dated June 9, 1953 (excerpts)	2936	2159
No. 283—Memorandum by Holmes Sales Manager, C. K. Empringham to File, captioned, Malcolm Goldstone, Central Office Alarm Company, dated April 5, 1962	2941	2163
No. 284—Letter from Holmes President H. C. Ward to Grinnell Secretary and Counsel R. T. Clapp, dated September 25, 1952	2942	2164
No. 285—Memorandum from ADT General Commercial Manager A. E. Smith to ADT Commercial Superintendents, captioned, Proprietary Systems, dated October 5, 1963 (excerpts)	2949	2171
No. 286—ADT Pamphlet reporting on ADT Protection Service for 1960 (excerpts)	2965	2173
No. 287—Memorandum from ADT First Vice President J. A. MacDonald to ADT President E. Gaston, dated June 6, 1957	2970	2178

Record from the United States District Court for the District of Rhode Island—Continued

	Original	Print
GOVERNMENT'S EXHIBITS—Continued		
No. 288—Minutes of Meeting of the Burglary Rating Committee of the National Bureau of Casualty Underwriters, April 25, 26, 27, 1950	2972	2181
No. 289—Letter from Holmes President H. C. Ward to Grinnell Secretary & Counsel R. T. Clapp, dated October 10, 1952	2974	2184
No. 291—ADT Leaflet entitled, Astute Business Executives are Constantly Proving that it Pays 2 Ways to Protect Property Automatically, Better Protection and Lower Cost	2977	2187
No. 292—Memorandum from ADT Associate Director of Diversification & Expansion G. E. Friedli to ADT Director of Diversification & Expansion J. J. Stephens, captioned, San Jose Peninsula Survey, dated November 28, 1956	2978	2189
No. 294—Memorandum from ADT Commercial Superintendent C. L. Chafee to ADT General Commercial Manager A. E. Smith, captioned, Competition—Cincinnati, Ohio, dated September 2, 1954	2981	2191
No. 295—Memorandum from ADT President E. Gaston to ADT Vice President A. E. Smith, captioned San Diego, California, dated October 25, 1957	2982	2192
No. 296—ADT Acquisition Agreement of the United Electric Service Company, New York, New York, dated July 21, 1931 (excerpts)	2983	2193
No. 297—ADT Acquisition Agreement of the Auxiliary Fire Alarm & Telegraph Co., Philadelphia, Pennsylvania, dated March 26, 1930 (excerpts)	2986	2194
No. 298—AFA central station protection Service Contract forms	2995	2199
No. 299—Memorandum from AFA Vice President F. D. Chase to AFA President T. P. Drew, captioned, Competition, dated September 4, 1958	2998	2203
No. 300—Memorandum from ADT Sales Representative J. J. Viscarde to ADT Assistant to General Sales Manager J. B. Bodley, captioned, Ivers-Lee, Newark, New Jersey, dated June 16, 1960	3000	2205
No. 302—Memorandum from ADT Government and Special Sales Division Manager J. O. Maxey to ADT General Sales Manager L. J. O'Brien, captioned, Competition, Owl Protective Company, New York, New York, dated May 17, 1960	3001	2206

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Record from the United States District Court for the District of Rhode Island—Continued		
GOVERNMENT'S EXHIBITS—Continued		
No. 303—ADT Leaflet, entitled, Municipalities Served by ADT Central Stations	3003	2208
No. 304—List of Approved Central Station Protection Service Companies which were listed by Underwriters Laboratories, Inc., on December 31, 1961	3007	2216
No. 305—Underwriters Laboratories, Inc. list of approved central station protection companies with the effective listing date	3011	2222
No. 306—Letter from A & P Transport, Inc., President E. G. Snow to Joseph Forman, Call's Police Signal Corporation, Chelsea, Massachusetts, dated July 9, 1959	3018	2228
No. 307—Holmes central station protection service contract forms	3019	2229
No. 308—Stipulation No. 1, Stipulation as to the authority of the documents offered into evidence by Plaintiff	3022	2235
No. 309—Stipulation No. 2, Stipulation as to the volume of commerce across State and District of Columbia lines	3058	2260
No. 310—Stipulation No. 3, Relative market position of central station protection service companies in Underwriters Laboratories, Inc., Certificated central station burglar alarm service	3062	2263
No. 311—Stipulation No. 4, Relative market position of alarm companies in Underwriters Laboratories, Inc., certificated local burglar alarm service	3064	2264
No. 312—Stipulation No. 5, Relative market position of central station protection service companies in the approved station protection service business in the United States	3067	2266
No. 313—Designation of answers of the American District Telegraph Company to interrogatories propounded by Plaintiff (excerpts)	3082	2279
No. 314—Designation of answers of the Holmes Electric Protective Company to interrogatories propounded by Plaintiff	3110	2301
No. 315—Designation of answers of the Automatic Fire Alarm Company of Delaware to interrogatories propounded by Plaintiff	3129	2318
No. 316—Designation of answers of the Grinnell Corporation to interrogatories propounded by Plaintiff	3149	2337
No. 317—Excerpts of deposition testimony of George F. Allebach, Sr., Insurance Rating Bureau of the District of Columbia	3167	2353

Record from the United States District Court for the District of Rhode Island—Continued

	Original	Print
GOVERNMENT'S EXHIBITS—Continued		
No. 318—Excerpts of deposition testimony of Emerson M. Booher, Dayton Electronics Alarm & Signal, Inc.	3238	2392
No. 319—Excerpts of deposition testimony of James H. Bray, Alarm Signal Company of Texas	3284	2418
No. 320—Excerpts of deposition testimony of John D. Brosnan, Federal Engineering Company, Inc.	3315	2432
No. 323—Excerpts of deposition testimony of Eugene Curran, Robinson Protective Alarm Company	3439	2488
No. 324—Excerpts of deposition testimony of Clarence S. Damon, Damon Alarm Corporation	3457	2497
No. 325—Excerpts of deposition testimony of Clifford T. Davis, Protection Engineering Corp.	3498	2517
No. 326—Excerpts of deposition testimony of James W. Flotron, Potter Electric Signal Co.	3550	2545
No. 328—Excerpts of deposition testimony of Joseph Forman, Owl Protective Company, General Burglar Alarm Company	3723	2627
Exhibit Volume V		
No. 329—Excerpts of deposition testimony of Malcolm Goldstone, Central Office Alarm Company, Inc.	3778	2647
No. 330—Excerpts of deposition testimony of Malcolm Goldstone, Owl Protective Company, General Burglar Alarm Company	3895	2705
No. 331—Excerpts of deposition testimony of Harold W. Gray, American Burglar Alarm Co. (Pacific Extinguisher Co.)	3955	2735
No. 333—Excerpts of deposition testimony of Sarah E. Jackson, Denver Burglar Alarm Company	4043	2786
No. 334—Excerpts of deposition testimony of Edward J. Lavino, Sentinel Alarm Corporation	4142	2841
No. 336—Excerpts of deposition testimony of Thomas M. Lewin, Automatic Alarm Corporation	4170	2854
No. 337—Excerpts of deposition testimony of Gerald J. Linder, American Fire Dispatch, Inc.	4233	2879
No. 338—Excerpts of deposition testimony of Thomas L. Lugen, Fidelity Electronic Protective Service	4253	2888

Record from the United States District Court for the District of Rhode Island—Continued

GOVERNMENT'S EXHIBITS—Continued	Original	Print
No. 339—Excerpts of deposition testimony of James H. McDowell, Central Station Signals, Inc.	4280	2897
No. 340—Excerpts of deposition testimony of Kenneth S. McFarlan, Jr., Republic Alarm Company	4341	2919
No. 341—Excerpts of deposition testimony of Peter J. Neumann, Albany Protective Service	4389	2933
No. 342—Excerpts of deposition testimony of Ephraim B. Oberlander, Protection Alarms, Inc.	4414	2943
No. 343—Excerpts of deposition testimony of Arthur T. Orner, Morse Signal Devices, Inc.	4461	2961
No. 345—Excerpts of deposition testimony of Shelton Phillips, Potter Electric Signal Company of Ohio	4501	2974
No. 346—Excerpts of deposition testimony of Donald D. Pillsbury, National Bureau of Casualty Underwriters	4527	2980
No. 347—Excerpts of deposition testimony of Henry J. Poile, Kedzie-Kane Alarm Co.	4558	3004
No. 348—Excerpts of deposition testimony of Charles C. Porch, Factory Mutual Rating Bureau	4599	3019
No. 349—Excerpts of deposition testimony of Walter W. Richardson, American Alarm Company, Inc.	4621	3027
No. 351—Excerpts of deposition testimony of James E. Rose, Michigan Still Alarm Co.	4647	3035
No. 352—Excerpts of deposition testimony of George W. Saunders, Underwriters Laboratories	4730	3069
No. 355—Excerpts of deposition testimony of George A. Smith, Smith Detective Agency & Nightwatch Service	4755	3079
No. 356—Excerpts of deposition testimony of Maurice G. Sondock, McCane-Sondock Detective Agency	4796	3102
No. 357—Excerpts of deposition testimony of Sidney Stackler, Central Watch Service	4819	3113
No. 358—Excerpts of deposition testimony of Lee C. Underdown, Central Alarm Company	4924	3152
No. 359—Excerpts of deposition testimony of Lyle and Joe Underdown, Central Alarm Company	4934	3159
No. 360—Excerpts of deposition testimony of Alex Venners, Federal Engineering Company, Inc.	4950	3169

Record from the United States District Court for the District of Rhode Island—Continued

	Original	Print
GOVERNMENT'S EXHIBITS—Continued		
No. 361—Excerpts of deposition testimony of Ira E. Warlick, Reliance Protective, Inc.	4984	3185
No. 362—Excerpts of deposition testimony of Morris F. Weinstock, Morse Signal Devices of California	5004	3198
No. 363—Excerpts of deposition testimony of Samuel G. Wight, Central Alarm Company, Ltd.	5077	3229
DEFENDANTS' EXHIBITS		
A—Schedule of Defendant alarm companies proposed objections to plaintiff's documents—For identification	5100	3242
B—Defendant Grinnell objections to Government documents—For identification	5104	3245
E-1—Minimum basic service charges effective January 1, 1960	5105	3246
E-2—Minimum basic advance service charges effective April 1, 1962	5107	3249
F—Form 701 dated August 1962	5109	3251
G—Form 400 dated February 1963	5110	3252
H-1—Summary in tabular form of contents of Exhibit H—Vocational Listing of Subscribers	5111	3253
Exhibit Volume VI		
I—Letter from L. J. O'Brien to C. L. Chafee, dated September 12, 1955 re: Procter & Gamble Company, Cincinnati, Ohio	5126	3270
F—68-80—Twelve tabulated exhibits and one list of book cities dated October 1, 1962 admitted at completion of testimony of Edward Gaston	5128	3273
J—Summary statement of local alarm accounts in five cities, based on Form 400	5446	3591
K—List of city of Everett, Massachusetts master boxes	5484	3629
L—List of city of Lynn, Massachusetts Police Department connections, (acting Chief George W. Donnelly), dated June 16, 1964	5486	3631
M—List of Everett, Massachusetts Police Station connections (Bradford V. Elliott, Chief of Police), dated June 16, 1964	5488	3632
N—List of master boxes and heat detection connections, Braintree, Massachusetts, Fire Department Headquarters	5489	3633
O—List of Braintree, Massachusetts, Police Department connections	5496	3638

Record from the United States District Court for the District of Rhode Island—Continued

	Original	Print
DEFENDANTS' EXHIBITS—Continued		
P—List of auxiliary connections in the Fire Department, Lynn City, Massachusetts	5498	3639
Q—List of Weymouth Fire Department direct connected and auxiliary alarm connections	5500	3640
R—List of Brockton Municipal connections, dated December 31, 1963	5502	3643
S—List of Boston Municipal connections, dated January 7, 1963	5503	3644
T—List of Salem Municipal connections, dated January 8, 1964	5504	3645
U—List of U.S. Government contracts (not security classified), December 31, 1963	5505	3647
V—Area list of Government installations, Continental United States, January 1, 1964	5547	3666
W(a)—List of ADT central station SS&WF subscribers in Natick, Needham and Newton, Massachusetts	5549	3667
Z-1—ADT contract form for modified central station service	5550	3669
Z-2—ADT contract form for central station protective signalling service	5552	3673
Z-3—ADT contract form for central station burglary and holdup protection service	5554	3677
Z-4—ADT contract form for direct connected service	5555	3679
Z-5—ADT contract form for local alarm service	5556	3681
K-1—ADT contract form for local alarm service (customer owned system)	5557	3683
L-1—List of representative installations made by ADT using systems and equipment made by others	5558	3685
M-1—List of representative systems installed by others, and sold outright to subscriber, where ADT was called in to restore service, and/or to provide a central station connection	5559	3685
U-1—Letter from Stanley N. Barnes, Assistant Attorney General, Antitrust Division to Frank A. Fritz, dated July 14, 1955	5560	3686
V-1—Statement of (ADT) Company's Revenues, gross and net balance sheet assets and indicated ratios, 1959 to 1963	5561	3687
W-1—Ratio of net earnings to gross assets, net assets and net worth (ADT), 1947 to 1963	5562	3688
X-1—Commercial Circular No. 197, supplement No. 21, dated July 25, 1960, from L. J. O'Brien regarding outright sales prices marked "Confidential"	5563	3689

Record from the United States District Court for the District of Rhode Island—Continued

DEFENDANTS' EXHIBITS—Continued	Original	Print
Y-1—List of offices showing annual and advance service charges secured in excess of minimum basic rates, 1957 to 1962	5564	3690
Z-1—Letter from L. J. O'Brien to J. A. MacDonald, dated August 16, 1960 re Pricing Policy Memorandum from ADT Special Representative J. R. Norris to ADT Commercial Superintendent C. L. Chafee, captioned National Can Corp., Cleveland, Ohio, dated July 23, 1954 (copy) (omitted in printing)	5572 5579	3696 3704
LL—Price Waterhouse & Company letter dated May 27, 1964 to The Board of Directors of ADT with Appendices A, B & C	5580	3705
MM(1-20)—Table of detailed financial data on a city-to-city basis regarding divestiture	5589	3717
NN—Statement of revenue and expenses—1963, New Orleans central station (ADT)	5674	3805
OO—Statement of revenue and expenses—1963, Richmond central station (ADT)	5675	3807
PP—Summary of ADT deficit offices in 1963	5676	3809
QQ—Analysis of advance service charges, city by city, 1957 to 1963	5677	3811
RR—List of advance service charges amortized on a city-to-city basis. Detail of Reply to Government Interrogatory No. 17	5700	3833
SS—Memorandum of J. A. MacDonald dated June 17, 1952 regarding discussions with Grinnell Corporation on June 16, 1952	5705	3839
UU—ADT Board of Directors minutes of June 11, 1952 (excerpts)	5710	3846
VV—Excerpts of ADT Board of Directors minutes for July 9, 1952	5712	3848
WW—Arthur D. Little, Inc. report on U.S. Market for electric protection services, 1961 to 1962	5724	3863
WW-1—Biographical summaries of Messrs. Gottlieb, Frankel & Peters	5806	3947

Exhibit Volume VII

XX—Interview guide used in conjunction with Arthur D. Little, Inc. survey	5809	3951
YY—Two Sanborn maps of Dubuque, Iowa	5813	3955
ZZ—Interviewer's materials relating to survey of of Dubuque, Iowa—Audit & Surveys, Inc., Forms 1, 2, 3, 4 & 5, Job #1232	5815	3957
AB—Q4 by Q23, amount of square feet occupied—this tabulation is related to Exhibit ZZ. Job #1232	5853	3991

Record from the United States District Court for the District of Rhode Island—Continued

	Original	Print
DEFENDANTS' EXHIBITS—Continued		
AC—Q4 by Q24, number of employees—this tabulation is related to Exhibit ZZ. Job #1232	5854	3992
AD—Q4 by type of business establishment, types of establishments—this tabulation is related to Exhibit ZZ. Job #1232	5855	3993
AE—Letters from L. J. O'Brien to District Sales Managers, dated April 4, 1956; December 2, 1957; August 7, 1959; August 29, 1960; November 23, 1960; re Form 701	5856	3995
AF—General Services Administration correspondence from September 20, 1962 to January 2, 1963	5861	3998
C-1—C-5—Defendant Alarm Companies objections to plaintiff's designations of deposition testimony	5893	4029
DEFENDANT GRINNELL CORPORATION'S EXHIBITS		
J-2—1950 Annual Report of the Grinnell Corporation	5899	4050
J-5—1953 Annual Report of the Grinnell Corporation	5912	4064
J-39—Index to Grinnell Corporation Catalog, dated 1960	5923	4075
J-40—AFA Company Balance Sheet, dated December 31, 1948	5936	4110
J-43—Agreement dated February 28, 1949 between Grinnell Corp. and Marine Midland Trust Co. of New York	5938	4111
J-44—Minutes of the Executive Committee of the Board of Directors, Grinnell Corp., March 23, 1949 (excerpts)	5941	4113
J-45—Letter from W. G. Hampton, Assistant Vice President, New York Telephone Co. to J. D. Fleming, President Grinnell Corp., dated February 20, 1950	5943	4114
Income statements of Holmes Electric Protective Company for the years 1921-1949	5944	4117
J-47—Agreement dated April 14, 1950 between New York Telephone Co. and Grinnell Corp.	5946	4120
J-48—Closing Memorandum (undated)	5996	4158
J-49—Letter from W. J. Klickhauf, Apple-Cole Co., to J. D. Fleming, dated May 4, 1953	6001	4163
J-50—Agreement dated June 16, 1953 between Western Union Telegraph Co. and Grinnell Corp. with Exhibits A-E	6002	4164
J-51—Loan Agreement, dated July 27, 1953 between Grinnell Corp. and the Equitable Life Assurance Society (excerpts)	6035	4199

Record from the United States District Court for the District of Rhode Island—Continued

DEFENDANT GRINNELL CORPORATION'S EXHIBITS—Continued

	Original	Print
J-52—Letter from Stanley N. Barnes, Assistant Attorney General to J. D. Fleming, dated June 29, 1953	6052	4205
J-53—Letter from Roger T. Clapp to W. D. Gaillard, Jr., Milbank, Tweed, Hope & Hadley, dated July 2, 1953	6054	4206
J-54—Letter from Roger T. Clapp to M. J. Bloomer, Jr., Wickes, Riddell, Bloomer, Jacobi & McGuire, dated July 2, 1953	6055	4207
J-55—Letter from Stanley N. Barnes, Assistant Attorney General to Frank A. Fritz, dated July 23, 1953	6057	4208
J-56—Letter from Frank A. Fritz to Ephraim Jacobs, Department of Justice, Antitrust Division, dated July 13, 1953	6058	4209
J-59—Memo dated July 24, 1950 from Roger T. Clapp to Department Managers, Fire Protection Division	6063	4212
J-60—Memo dated June 10, 1963 from Roger T. Clapp to Department Managers, Fire Protection Division	6064	4214
J-62—Memo dated February 20, 1954 from O. L. Swats, Manager, Fire Protection Division to Department Managers, Contracting Engineers, et al.	6065	4215
J-65—Memo dated April 21, 1950 from H. C. Ward to All Holmes Employees	6066	4216
J-66—Letter from J. A. MacDonald to Roger T. Clapp dated June 24, 1953	6068	4218
J-69—Memorandum of Material for Discussion with Messrs. Gaston and MacDonald on June 16	6070	4219
J-70—Letter from Bleakley, Platt, et al. to the Equitable Life Assurance Society, dated July 23, 1953	6076	4226
J-74—Minutes of a special meeting of the Board of Directors of the Grinnell Corporation dated June 2, 1953	6077	4227
J-75—Statement showing "1928-1937 Earnings Data"—Grinnell Corporation	6079	4229
J-75(1)—General Fire Extinguisher Co.—Report of the Treasurer To The Board of Directors for Twelve Months Ended December 31, 1928 (excerpts)	6080	4230
J-75(2)—Ended December 31, 1929 (excerpts)	6087	4238
J-75(3)—Ended December 31, 1930 (excerpts)	6094	4246
J-75(4)—Ended December 31, 1931 (excerpts)	6101	4254

Record from the United States District Court for the District of Rhode Island—Continued

DEFENDANT GRINNELL CORPORATION'S EXHIBITS—Continued

	Original	Print
J-75(5)—Ended December 31, 1932 (excerpts)	6114	4262
J-75(6)—Ended December 31, 1933 (excerpts)	6125	4270
J-75(7)—Ended December 31, 1934 (excerpts)	6134	4277
J-75(8)—Ended December 31, 1935 (excerpts)	6143	4285
J-75(9)—Ended December 31, 1936 (excerpts)	6154	4293
J-75(10)—Ended December 31, 1937 (excerpts)	6163	4301
J-76—Plaintiff's Answers to Certain Interrogatories of Alarm Company Defendants	6172	4309
Appendix A—Letter from Stanley N. Barnes, Assistant Attorney General to Frank A. Fritz, dated July 23, 1953 (copy) (omitted in printing)	6187	4318
Appendix B—Letter from Stanley N. Barnes, Assistant Attorney General to J. D. Fleming, dated June 29, 1953 (copy) (omitted in printing)	6188	4318
Appendix C—Letter from Frank A. Fritz to Ephraim Jacobs, Department of Justice, Antitrust Division, dated July 13, 1953 (copy) (omitted in printing)	6190	4318
J-77—Balance sheet and income statements of AFA as of June 30, 1948	6195	4319

DEFENDANT ADT'S EXHIBITS

A9—Memo dated December 15, 1952 from J. L. Hardesty to H. R. Eakin, Plant Superintendent, captioned Competition—Washington, D. C.	6201	4323
—Memo dated December 22, 1952 from J. B. Bodley to A. E. Smith captioned "Federal Engineering Co., Inc., Washington, D. C.	6202	4324
A13—Memo dated September 29, 1953 from A. E. Smith to J. A. MacDonald captioned Westchester County	6203	4324
—Memo dated September 14, 1951 from W. J. Doyle, Commercial Superintendent, to A. E. Smith, captioned Modified Central Station Burglar Alarm Service	6206	4326
A31—Letter dated March 23, 1959 from Jamie Bray, Alarm Signal Company of Texas to Frank E. Guibert	6209	4331
A36—Handwritten letter dated June 2, 1962 from T. E. Smith to Mr. Haberman captioned Competition, San Antonio, Texas—Texas Industrial Surveys	6212	4334

Record from the United States District Court for the District of Rhode Island—Continued

	Original	Print
Defendant ADT's Exhibits—Continued		
A37—Letter dated October 18, 1955 from J. K. Scott to A. S. Cook, Manager, captioned Riverside Protective Association, Houston 9, Texas	6214	4335
A38—Letter dated October 1, 1959 from R. F. Ethridge to R. T. Warner, captioned The Polaroid Company, Dallas, Texas	6215	4336
A39—Letter dated June 22, 1959 from S. W. Christian to J. B. Rustic, captioned Competition—El Paso	6216	4337
A40—Letter dated March 15, 1960 from J. D. Patton to L. J. O'Brien, captioned Competition	6217	4338
A41—Letter dated December 11, 1956 from C. A. Southard to J. K. Scott, captioned Scobey Fireproof Storage Company, San Antonio, Texas	6218	4338
A47—Memo dated November 2, 1959 from J. B. Bodley to E. J. Heisley, captioned Competitive Fire-Alarm System, Pittsburgh, Pa.	6219	4340
A49—Memo dated November 20, 1962 from Jake Kowalyk to W. J. Robinson, captioned Competition—Pittsburgh	6220	4341
A51—Memo dated March 12, 1956 from W. J. Dahl to L. J. O'Brien captioned Boeing Airplane Company, Seattle, Washington, Conversion	6223	4344
A52—Letter dated March 14, 1956 from T. I. Young to W. J. Dahl, re: Boeing Airplane Company, Seattle, Washington, Conversion	6224	4345
A53—Memo dated January 30, 1956 from J. J. Stephens to J. A. MacDonald, captioned Direct Connected Services, Competition and Compensation	6225	4345
A54—Memo dated February 15, 1956 from R. M. Bugbee to A. W. Sullivan, captioned Gamewell Competitions, Indiana	6229	4350
A55—Memo dated October 10, 1955 from A. W. Sullivan to L. J. O'Brien, captioned Competition, Kenosha, Wisconsin	6230	4351
A57—Memo dated July 30, 1955 from R. V. Haight to H. B. Schultz	6231	4352
A61—Letter dated January 4, 1954 from E. J. Heisly to A. E. Smith, re: Wurzburg Bros., Memphis, Tenn. (Factory Mutuals)	6232	4353
A62—Memo dated September 24, 1953 from J. Heath, Jr., to E. B. White, re Los Angeles and Salt Lake Railways, Los Angeles 23, California	6233	4354

Record from the United States District Court for the District of Rhode Island—Continued	Original	Print
DEFENDANT ADT's EXHIBITS—Continued		
A63—Memo dated March 20, 1953 from W. B. O'Hara to D. E. Kloster, re: Erie Resistor Corp., Erie, Pa.	6234	4355
A64—Memo dated February 12, 1953 from O. T. Blank to F. J. Concannon, re: Benjamin Moore Co., Denver, Colorado	6235	4356
A66—Memo dated March 6, 1952 from E. A. Rogers, Jr. to A. S. Cook, re: Competition, Wild & Stevens, Inc., Needham Street, Newtonville, Mass.	6236	4357
A67—Memo dated October 2, 1952 from N. Slavin to A. S. Cook, re: Hotels Statler Company, Hartford, Connecticut	6237	4359
A68—Memo dated April 7, 1952 from D. R. Hall to A. S. Cook, re: Ford Motor Company, Natick, Mass.—Compulsory Tour Service	6238	4359
A70—Memo dated January 18, 1952 from D. R. Hall to W. R. Boos, re: Ford Motor Company, Edgewater, New Jersey	6239	4361
A71—Memo dated September 5, 1951 from E. J. Heisley to A. E. Smith, re: Union Bag and Paper Company, Savannah, Georgia	6240	4362
A77—Memo dated August 11, 1955 from J. B. Bodley to L. J. O'Brien captioned Competition—Richmond, Virginia	6241	4363
—Memo dated August 8, 1955 from R. O. Beckham to J. B. Bodley entitled Competition—Richmond, Virginia	6242	4364
A78—Memo dated June 1, 1953 from T. J. Yocom to E. B. White entitled Competition Report	6244	4365
A79—Memo dated July 1, 1959 from Ray Breechbill to Lyle Straus entitled Competition—Fort Worth	6246	4366
A82—Memo dated March 18, 1955 from W. J. Doyle to J. A. Webb, re: The Jamison Plastic Corporation, North Bellmore, Long Island, N.Y.	6245	4367
A84—Memo dated October 10, 1952 from G. J. Simon to John Hannon entitled Beth Israel Hospital, New York City	6247	4368
A85—Memo dated December 9, 1952 from W. J. Doyle to C. S. Hammergren re: Beth Israel Hospital, New York, N.Y.	6248	4369
A86—Memo dated April 8, 1957 from W. R. Boos to W. J. Doyle re: Duro-Test Corp., Secaucus, New Jersey	6249	4370

	Original	Print
Record from the United States District Court for the District of Rhode Island—Continued		
DEFENDANT ADT'S EXHIBITS—Continued		
A89—Memo dated July 29, 1958 from C. H. Sanders to W. J. Doyle re: Globe Products Co., Inc., Webro Road, Clifton, New Jersey	6250	4371
A95—Memo dated August 6, 1951 from A. E. Smith to John Hannon captioned Auxiliary Fire Alarm Service, Trenton, New Jersey	6252	4373
A98—Memo dated January 5, 1952 from M. E. Hubert to W. W. Dooley, captioned First National Bank, Omaha, Nebraska	6253	4374
B8—Memo dated March 21, 1961 from A. S. Jacks to L. J. O'Brien captioned Competition, Erie, Pennsylvania	6254	4375
B9—Memo dated November 21, 1960 from J. J. Caffrey to L. J. O'Brien captioned Competitive Advertising	6256	4376
B11—Memo dated May 19, 1959 from R. J. Dellinger to A. S. Jacks re: Gamewell Competition—Erie, Pennsylvania	6260	4379
B12—Memo dated March 7, 1959 from R. J. Dellinger to A. S. Jacks re: Gamewell Company	6262	4381
B13—Memo dated May 17, 1959 from R. M. Bugbee to A. S. Jacks re: Gamewell Competition—Erie, Pennsylvania	6263	4382
B17—Memo dated May 5, 1958 from F. T. Turner to J. B. Rustic captioned "Auxiliary Fire Alarm Systems—City of Pittsburgh, Pennsylvania"	6264	4383
B18—Memo dated April 11, 1958 from R. T. Warner to L. J. O'Brien captioned "Olin Mathieson Chemical Corp., New Haven, Conn."	6266	4385
B19—Memo dated March 28, 1958 from W. J. Dahl to A. W. Sullivan captioned Competition—Fire Alarm Service, City of Portland, Oregon, Auxiliary Fire Alarm Systems connected to Municipal Circuits	6269	4387
B20—Memo dated March 25, 1958 from H. E. Peters to A. S. Jacks captioned Competition	6271	4389
B21—Memo dated October 15, 1957 from "District Sales Manager" (RTW) to L. J. O'Brien, captioned Insurance Relations—FIA and FM	6273	4390
B24—Memo dated June 7, 1956 from G. B. Fosmire to C. L. Chafee, captioned Competition—Columbus, Ohio	6275	4392
B30—Memo dated September 24, 1954 from D. M. Gates to C. L. Chafee	6277	4393

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	Original	Print
DEFENDANT ADT'S EXHIBITS—Continued		
B33—Memo dated September 15, 1954 from J. A. MacDonald to A. W. Sullivan entitled Notifier Mfgs. Co.	6278	4395
B34—Memo dated September 10, 1954 from L. J. O'Brien to J. A. MacDonald re Competition—Notifier Alarm Co.—Spurling Automatic Fire Alarm Co.	6279	4396
B38—Memo dated August 30, 1954 from R. L. Hopf to C. L. Chafee re Competition—Spurling & Notifier	6280	4397
B40—Memo dated June 8, 1954 from Oper. Supt. (DHB) to J. B. Rustic, re Competition—Lincoln, Nebraska	6281	4398
B92—Memo dated September 18, 1952 from R. M. Bugbee to A. E. Smith, re Atmo Competition—New Haven, Conn.	6284	4400
B94—Letter from "Koos Bros." signed by George O. Klemp to B. W. Fox, Anchor Motor Freight-New York Corp., Linden, New Jersey, dated August 15, 1952	6286	4402
B95—Memo dated September 24, 1952 from A. F. Clunan to W. J. Doyle, re Competition—Atmo, Linden Investment Co., Linden, New Jersey	6287	4403
C1—Memo dated May 14, 1951 from R. M. Bugbee to A. S. Cook re Atmo Competition, New Haven, Connecticut	6288	4404
C3—Memo dated July 22, 1957 from J. B. Bodley to O. E. Betscher, captioned M. H. Connell Associates, Miami, Florida	6289	4405
C4—Memo dated July 27, 1962 from C. C. Rasmussen, Jr. to W. J. Robinson, re *"United States* v. *Grinnell Corp. et al."*	6290	4406
C8—Memo dated July 11, 1952 from R. M. Pinio to B. H. Sofge re Ace Burglar Alarm Company, Hartford, Connecticut	6291	4407
C10—Memo dated July 7, 1952 from K. E. Berrett to R. M. Pineo, re Ace Burglar Alarm Company, Hartford, Connecticut	6292	4408
C13—Memo dated July 1, 1960 from D. H. Barnett to L. J. O'Brien re "Proposed Councilmen's Bill, Denver, Colorado"	6293	4409
C14—Memo dated November 29, 1954 from "Vice President" to L. J. O'Brien re Denver Ordinance	6296	4412
C15—Copy of Ordinance allowing Denver Banks to install direct connect alarms, Series of 1954	6298	4414

Record from the United States District Court for the District of Rhode Island—Continued	Original	Print
DEFENDANT ADT'S EXHIBITS—Continued		
C21—Memo dated December 18, 1952 from W. K. Francis to E. B. White re Competition—Tele-Fire of California, Pasadena, California	6301	4417
C22—Memo dated April 17, 1953 from J. Heath, Jr. to E. B. White re competition—Fullerton Mutual Orange Ass'n., Inc., Fullerton, California	6304	4421
C26—Memo dated April 11, 1958 from W. K. Francis to L. J. O'Brien, entitled Competition—Sacramento, California	6305	4422
C31—Memo dated August 28, 1962 from W. J. Kupper to Ray Brechbill, re District #13—Sales Integrity and Competition	6306	4423
C32—Memo dated June 16, 1954 from W. K. Francis to E. B. White re Sears, Roebuck & Company, Tucson, Arizona	6315	4432
C33—Memo dated April 29, 1957 from J. A. MacDonald to J. B. Rustic, re Competition—Spurling Fire Alarm & Indicator Co., Louisville, Kentucky	6317	4434
C34—Memo dated December 21, 1956 from W. J. O'Meara to E. O. Betscher, re Yellowstone Distillery, Inc., Shively, Kentucky	6318	4435
C35—Memo dated November 30, 1956 from E. O. Betscher to L. J. O'Brien, re Competition—Spurling Fire Alarm & Indicator Company, Louisville, Kentucky	6319	4436
C36—Memo dated September 12, 1956 from J. B. Bodley to E. O. Betscher, re Competition—Spurling Fire Alarm & Indicator Company, Louisville, Kentucky	6321	4439
C40—Memo dated September 7, 1955 from A. A. Balestrino to C. C. Chafee re Competition—Cincinnati, Ohio	6323	4440
C41—Memo dated September 10, 1954 from R. L. Hopf to C. L. Chafee re Competition—Direct Connect to Fire Tower	6324	4442
Agreement between the City of Cincinnati and Spurling granting direct connect permission, dated August 6, 1954	6325	4443
C42—Memo dated September 17, 1953 from E. J. Heisley to A. W. Sullivan, re Auxiliary & Direct Connect Competition, Charleston, South Carolina	6326	4445
C49—Memo dated March 4, 1960 from D. R. Hall to R. T. Warner, re GMC, New Departure Division, Bristol, Connecticut	6328	4448

Record from the United States District Court for the District of Rhode Island—Continued

	Original	Print
DEFENDANT ADT'S EXHIBITS—Continued		
C53—Memo dated May 6, 1958 from R. G. Dodd to L. M. DeSchane re: Mid-West Conveyor Company, Inc., Kansas City, Kans.	6329	4449
C55—Memo dated April 4, 1958 from R. G. Dodd to L. M. DeSchane	6331	4451
C59—Memo dated March 14, 1957 from L. M. DeSchane to L. J. O'Brien re: Competition—Omaha and Lincoln, Nebraska	6332	4452
C60—Memo dated February 11, 1957 from H. E. Elster to D. H. Barnett re: Competition—Omaha, Notifier and Dictograph Corp.	6333	4453
C61—Memo dated January 9, 1957 from Ray Brechbill to E. Turnbull captioned Competition—Oshkosh, Wisconsin	6336	4456
C66—Memo dated May 27, 1955 from "E.O.B." to L. J. O'Brien captioned Banks, Direct Connect Privilege	6337	4457
C67—Memo dated May 23, 1955 from "District Operating Superintendent" to J. B. Rustic captioned B. A. System By Diebold, Inc., Canton, Ohio	6338	4458
—Newspaper clipping describing the ultrasonic device used by Diebold in local and direct connect vault alarm service	6339	4459
C76—Memo dated August 13, 1954 from R. L. Beckwith to D. R. Hall	6340	4460
C81—Memo dated November 11, 1953 from L. J. O'Brien to E. P. Hagan re Competition—Diebold, Police Headquarters, Milwaukee, Wisconsin	6341	4461
C87—Memo dated January 5, 1952 from M. E. Hubert to Mr. Dooley, Re: First National Bank, Omaha, Nebraska	6343	4463
C89—Memo dated January 13, 1958 from R. A. Bewes to R. T. Warner, Re: State of New York Executive Department, Division of Military and Naval Affairs, Albany, N.Y.	6344	4464
C91—Memo dated June 27, 1962 from W. K. Francis to Ray Brechbill, Re: Golden Gateway, Redevelopment Project, San Francisco, California	6346	4466
C97—Memo dated February 27, 1957 from D. R. Hall to L. J. O'Brien, Re: Proprietary Systems, GMC, Chevrolet Division, Ford Motor Company, Chrysler Motors Corporation	6347	4467

Record from the United States District Court for the District of Rhode Island—Continued

	Original	Print
DEFENDANT ADT'S EXHIBITS—Continued		
D1—Memo dated August 19, 1952 from Commercial Superintendent to A. E. Smith re Aero Competition—Boston, Mass.	6349	4469
D11—Memo dated December 7, 1962 from W. A. Clark to W. C. Marin re The John Shillito Co., Cincinnati, Ohio	6350	4471
D15—Memo dated August 1, 1961 from F. J. Concannon to L. J. O'Brien captioned Julius Kessler Distilling Company, Calvert Distilling Company, Jeffersonville, Indiana (Louisville)	6352	4472
D18-1—Memo dated February 2, 1961 from R. L. Beckwith to J. K. Swanson re: Jacobsen's, Jackson, Michigan	6354	4474
D18-2—Memo dated December 26, 1960 from Ray Brechbill to L. J. O'Brien re: American Hard Rubber Company, Akron, Ohio	6356	4476
D20—Memo dated August 31, 1960 from L. J. O'Brien to District Sales Managers and Representatives, captioned Competition—Minneapolis-Honeywell	6357	4477
D21—Memo dated January 20, 1959 from M. H. A. Lindsay to J. A. MacDonald captioned Minneapolis-Honeywell Regulator Co., Minneapolis, Minnesota	6359	4479
D22—Memo dated August 16, 1960 from N. R. Brady to J. B. Bodley re Travelers Broadcast House, Hartford, Conn.	6361	4482
D24—Memo dated July 8, 1960 from J. B. Bodley to all ADT executive officers, re "Competition—Minneapolis-Honeywell Company"	6362	4484
D26—Memo dated April 29, 1960 from A. S. Jacks to H. B. Schultz re Tri-County Shopping Center—Shillito's, Federated Department Store	6364	4486
D27—Memo dated February 3, 1960 from M. H. A. Lindsay to J. A. MacDonald re Minneapolis Honeywell Regulator Company and Competition in general	6365	4487
D28—Competition Report—November 20, 1962—West Orange, New Jersey. Job lost to Kidde Atmo	6368	4491
D30—Memo dated August 9, 1961 from M. H. A. Lindsay to L. J. O'Brien re New CIA Headquarters, Washington, D. C. area	6369	4493
D32—Memo dated June 13, 1960 from A. Gaston to L. J. O'Brien re L. Bamberger & Company, Newark, New Jersey	6370	4494

Record from the United States District Court for the District of Rhode Island—Continued

	Original	Print
DEFENDANT ADT'S EXHIBITS—Continued		
D33—Memo dated January 26, 1960 from F. D. Shadell to W. J. Doyle re Competition	6371	4495
D36—Memo dated January 31, 1956 from J. R. Hough to E. O. Betscher re Spurling and Kidde, Miami, Florida	6373	4497
D40—Memo dated January 14, 1954 from A. W. Sullivan to A. E. Smith captioned Atmo Competition	6375	4498
D41—Memo dated April 2, 1953 from "General Superintendent" to R. M. Pinco captioned Atmo Fire Alarm Company, Bridgeport, Conn.	6376	4499
D42—Memo dated May 27, 1953 from R. M. Bugbee to A. E. Smith captioned Atmo Competition—New Haven, Conn.	6377	4500
D45—Memo dated October 22, 1952 from W. J. Doyle to A. E. Smith re: Automatic Fire Alarm Competition, State of New Jersey	6378	4501
D46—Memo dated October 14, 1952 from F. H. Langille to W. J. Doyle re: Automatic Fire Alarm Competition, State of New Jersey	6380	4502
D51—Memo dated September 2, 1954 from E. J. Kaiser to King Young re: Competition	6381	4503
D59—Memo dated April 8, 1959 from J. T. Lynch to R. T. Warner re: The New Haven Board and Carton Co., New Haven, Conn.	6382	4504
D62—Memo dated March 12, 1957 from L. B. Straus to L. J. O'Brien re: Marshall Field & Co., Park Forest, Illinois	6384	4506
D75-B—Underwriters' Laboratories, Inc. Accredited Central Stations by date of approval since 1945	6385	4507
D75-E—Manual of Burglary Insurance (excerpts)	6387	4509

Exhibit Volume VIII

D89—Memo dated July 28, 1960 from Ray Brechbill to R. J. Highstone re: Highland Park Police Department, Highland Park, Illinois	6391	4523
D92—Memo dated January 5, 1960 from R. P. Lucy to W. K. Francis re: Bemis Bag Co., Newark, California	6392	4524
D93—Memo dated October 5, 1954 from L. J. O'Brien to A. E. Smith re: Direct Connected Competition—Diebold Company and Gamewell Co., Sioux City, Iowa	6393	4525

	Original	Print
Record from the United States District Court for the District of Rhode Island—Continued		
DEFENDANT ADT'S EXHIBITS—Continued		
D97—Memo dated June 30, 1955 from C. L. Chafee to A. E. Smith re: Competition—Cincinnati, Ohio	6395	4526
E1—Sprinkler Supervisory Coordinating Instructions No. 3, dated November 24, 1953 from C. S. Hammergren to All ADT Subsidiaries	6396	4528
E3—Letter from W. J. Dahl to A. W. Sullivan dated February 11, 1959, captioned Competition—Tacoma, Washington	6398	4530
E4—Letter from S. H. Filipkowski to W. B. Flammer, dated August 6, 1956, captioned ADT Competition, Birmingham, Alabama	6400	4532
E6—Memorandum from the Service Superintendent of ADT, Detroit, Michigan to Mr. Swanson, District Manager, dated October 10, 1960, captioned Competition—Detroit, Michigan	6401	4533
E7—Memorandum from W. K. Francis to L. J. O'Brien, entitled Competition, San Francisco, California	6402	4534
E8—Memorandum from R. T. Warner to L. J. O'Brien, dated April 6, 1960, captioned Competition	6405	4538
E9—Memorandum from E. J. Heisley to L. J. O'Brien captioned Competition—Washington, D. C., dated April 15, 1960	6407	4541
E10—Memorandum from A. S. Jacks to L. J. O'Brien dated April 25, 1960, captioned Competition—Cleveland District	6410	4543
E-13—Letter from C. L. Chafee to L. J. O'Brien, dated June 7, 1957, captioned Competition—Radar Eye Corporation	6412	4547
E14—Memorandum from C. L. Chafee to L. J. O'Brien, dated May 13, 1957 captioned Competition—Cleveland, Ohio	6413	4548
E15—Memorandum from E. J. Heisley to L. J. O'Brien, dated April 17, 1957, captioned Competition Radar-Eye	6414	4549
E16—Memorandum from R. T. Warner to L. J. O'Brien, dated March 8, 1957, captioned Competition—Radar-Eye	6415	4550
E18—Memorandum from E. J. Heisley to L. J. O'Brien, dated March 6, 1957, captioned Competition—Radar-Eye	6416	4551
E19—Photostatic copy of an advertisement for the Radar-Eye Protection System as published in the Buffalo Carrier Express Newspaper, February 11, 1958	6417	4553

Record from the United States District Court for the District of Rhode Island—Continued

	Original	Print
DEFENDANT ADT'S EXHIBITS—Continued		
E22—Memorandum from A. L. Kauffman to W. W. Dooley, dated August 12, 1954, captioned Competition—Denver, Colo.	6418	4555
E28—Memorandum from W. E. Mauroschadt to E. J. Heisley, dated December 18, 1956, captioned Competition, First Camden National Bank, Camden, New Jersey	6419	4556
E-32—Memorandum from D. R. Hall to L. J. O'Brien, dated March 21, 1956, captioned Competition—Diebold Bank Alarms	6420	4557
E-36—Memorandum from C. K. Empringham to Mr. John Stephens, dated August 30, 1955	6421	4558
E48—Memorandum from Lynne Stora to E. B. White, dated August 9, 1954, captioned Continental Can Company, Sacramento, California	6422	4559
E52—Letter from the President of ADT to the President of Holmes Electric Protective Company, dated March 27, 1947	6424	4561
E53—Letter from H. C. Ward, President, Holmes Electric Protective Company to E. A. Ward, President, ADT, dated March 26, 1947	6425	4561
E55—Memorandum from E. Turnbull to L. J. O'Brien, dated November 27, 1956, captioned "Certificate—Holdup Alarm, Minneapolis District"	6426	4562
E56—Memorandum from M. H. A. Lindsay to J. A. MacDonald, dated January 20, 1959, captioned Southdale Shopping Center, Minneapolis, Minnesota	6427	4563
E57—Memorandum from L. H. Pryor to E. Turnbull, dated June 20, 1956, captioned Electro-Watchman, Inc.	6430	4566
E58—Memorandum from L. H. Pryor to E. Turnbull, dated May 29, 1956, captioned Electro-Watchman, Inc., St. Paul, Minnesota	6432	4569
E60—Memorandum from D. R. Hall to L. J. O'Brien, dated September 2, 1958, captioned McConnell Kerr Company, Detroit, Michigan	6434	4571
E61—Contract competition report form 701 involving a prospect in Grand Rapids, Michigan	6435	4573
E69—Memorandum from R. T. Warner to L. J. O'Brien, dated April 12, 1957, captioned Competition—The Federal Burglar Alarm Company, Boston, Massachusetts	6436	4575
E70—Memorandum from R. T. Warner to L. J. O'Brien, dated January 8, 1958	6437	4575

Record from the United States District Court for the District of Rhode Island—Continued

	Original	Print
Defendant ADT's Exhibits—Continued		
E71—Memorandum from R. T. Warner to L. J. O'Brien, dated September 12, 1956, captioned Kennedy's Inc.	6438	4577
E72—Memorandum from N. R. Brady to R. T. Warner, dated July 25, 1956	6439	4578
E82—Memorandum from E. J. Pucci to W. Hable, dated January 18, 1963, captioned Legislation—Laws and Ordinances Passed by City Councils and State Legislatures in the Minneapolis District—Davenport—Moline	6440	4579
—Attachments—Newspaper clippings	6441	4579
E84—Memorandum from E. Turnbull to L. J. O'Brien, dated July 27, 1960, captioned Competition—Cedar Rapids, Iowa	6445	4581
E86—Memorandum from D. R. Hall to L. J. O'Brien, dated September 2, 1958, captioned The Columbia-Western Corporation, South Bend, Ind.	6447	4583
E89-1—Letter from C. A. Wiborg, Lumbermen's Mutual Casualty Company to the Holmes Electric Protective Company, dated January 30, 1956, captioned Stewart Warner, Inc.	6448	4584
E-89-2—Letter from E. J. Heisley to A. E. Smith, dated December 7, 1954, captioned Police Department Competition, Atlanta, Georgia	6449	4585
F16—Memorandum from the Secretary of ADT to J. A. MacDonald, dated June 24, 1963, captioned The Citizens & Southern National Bank, Atlanta, Georgia	6451	4589
F20—Memorandum from W. J. Dahl to Ray Brechbill, dated March 5, 1964, captioned Public Relations, Fire Department, Salt Lake City, Utah	6458	4597
F42—Memorandum from J. J. Hayden to J. K. Scott, dated September 23, 1963, captioned Southern Burglar Alarm Co., Atlanta, Georgia	6463	4603
F43—Memorandum from P. K. Labadie to W. C. Martin, dated April 23, 1964, captioned Competition	6464	4604

Record from the United States District Court for the District of Rhode Island—Continued

	Original	Print
DEFENDANT HOLMES ELECTRIC PROTECTIVE COMPANY'S EXHIBITS		
H4—Pamphlet of the Autocall-Howe Plant Protection Systems	6466	4605
H5—Letter from C. K. Empringham to Howard Stores, Inc., Brooklyn, N.Y., dated August 31, 1959	6475	4615
H11—Report by J. G. Healey, Superintendent of Shops and Supplies, on the Local Alarm Conference, held November 4, 1960 in the President's Office, dated November 4, 1960 (excerpts)	6478	4617
H16—Leaflet called "Protective Bulletin" issued by the Insurance and Protective Department, American Bankers Association, for March, 1960	6483	4619
H18-1—Letter from H. C. Ward to P. R. Webb dated April 16, 1952	6485	4622
H18-2—Memorandum from V. Wierman, Diebold, Inc., August 6, 1955	6488	4627
H-23—Competition report of Holmes, dated June 9, 1961, Pittsburgh, Pa. for the protection account of the Keystone Iron & Metal Company	6490	4629
H-26—Holmes Business Form No. 640 states that Holmes was bidding against a local alarm company for the protection account of Citra Trading Corp.	6491	4630
H-30-1—Competition Report of the Holmes Electric Protective Company, dated January 3, 1963 in Philadelphia for the protection account of the Strait Advertising Company, Incorporated	6492	4631
H30-2—Letter from T. L. Weber to Bruce D. Crockett, dated August 7, 1962, captioned Competitive Activity	6493	4633
DEFENDANTS' EXHIBITS (Depositions)		
W2a—Excerpts of deposition testimony of Joseph E. Cunningham, A. P. F. Company	6494	4634
W4a—Excerpts of deposition testimony of M. I. Brod, Accurate Burglar Alarm Service	6523	4646
W5a—Excerpts of deposition testimony of Gerson Zimmerman, Ace of Spades Burglar Alarm Company	6537	4649
—Exhibits and handwritten corrections	6648	4700
W6a—Excerpts of deposition testimony of Thomas J. Smith, Alarm Engineering Company, Inc.	6660a	4708
—Exhibits A thru E	6660xxx	4754
W7a—Excerpts of deposition testimony of John W. Callaghan, Alarm Systems, Inc.	6660eeee	4765
W8a—Excerpts of deposition testimony of Joseph Siegel, Alert Alarm Company	6662	4788

Record from the United States District Court for the District of Rhode Island—Continued

	Original	Print
DEFENDANTS' EXHIBITS (Depositions)—Continued		
W9a—Excerpts of deposition testimony of George J. Kusta, Arrow Electric Protection Company	6713	4807
W10a—Excerpts of deposition testimony of Eric David, Tattle-Tale Alarms	6813	4843
W11a—Excerpts of deposition testimony of Roy Van Wagner, Autocall Company	6861	4861
—Affidavit of Roy Van Wagner, dated August 7, 1963	6905	4880
W12a—Excerpts of deposition testimony of Frank W. Houghton, Automatic Alarms	6907	4881
—Exhibits 7, 8, 13 and 14	7006	4921
W13a—Excerpts of deposition testimony of Everett A. Westphal, Bay Alarm Company	7012	4925
W14a—Excerpts of deposition testimony of Morton Baizer, Bell Burglar Alarms and Eagle Protective Company	7073	4951
W16a—Excerpts of deposition testimony of Joseph G. Wilson, Central Burglar Alarm Service and Surety Alarm Company	7166	4987
—Exhibits 1 & 2	7255	5026
W17a—Excerpts of deposition testimony of Arthur A. Schwartz, Certified Burglar Alarm Systems, Inc.	7261	5039
W18a—Excerpts of deposition testimony of Clarence W. Novak, Chicago Mercantile Police Alarm Systems	7437	5115
W19a—Excerpts of deposition testimony of James H. Coffey, Circle Alarm Corporation	7455a	5122
W21a—Excerpts of deposition testimony of Kenneth M. Holmes, Dallas Burglar Alarm Company	7458	5152
W22a—Excerpts of deposition testimony of Claude L. Carpenter, Dawn Patrol Burglar Alarm Company	7490	5166
—Exhibits 2 and 4	7565	5192
W23a—Excerpts of deposition testimony of Grant Richard Hamilton, Day & Night Burglar Alarm Company	7570	5196

Exhibit Volume IX

W24a—Excerpts of deposition testimony of Alfred Wayne Jackson, Diebold, Incorporated	7626	5215
W25a—Excerpts of deposition testimony of R. Stafford Edwards, Edwards Company	7742	5255
W26a—Excerpts of deposition testimony of Lyle A. Vadnais, Electro Watchman, Inc.	7784	5281

Record from the United States District Court for the District of Rhode Island—Continued

	Original	Print
DEFENDANTS' EXHIBITS (Depositions)—Continued		
W27a—Excerpts of deposition testimony of Gerald R. DeLue, Frontier Guard and DeLue, Inc.	7845	5308
W28a—Excerpts of deposition testimony of Arthur William Fruh, A. W. Fruh & Company	7916	5344
W29a—Excerpts of deposition testimony of Harry Gerber, Gerber & Company	7935	5354
W30a—Excerpts of deposition testimony of Loys C. Bridges, Greenville Avenue Patrol	7998	5378
W31a—Excerpts of deposition testimony of Milton Pieree, Guardian Alarm Company	8035	5395
W32a—Excerpts of deposition testimony of Julian C. Cohn, Robert Hall Clothes, Inc.	8097	5418
W33a—Excerpts of deposition testimony of Kenneth V. McCluskey, Howard Stores Corporation	8113	5423
W34a—Excerpts of deposition testimony of John S. Nacey, Howe Electric Company	8128	5429
W36a—Excerpts of deposition testimony of John H. Trout, International Business Machines Corporation	8219	5459
W37a—Excerpts of deposition testimony of Gordon Dillard, Magnetic Alarm Inc.	8244	5469
W38a—Excerpts of deposition testimony of Clarence Irvin Baker, Merchants Alarm Service	8314	5491
W39a—Excerpts of deposition testimony of Russell W. Laxson, Minneapolis Honeywell Regulator Company	8399	5530
W40a—Excerpts of deposition testimony of William Baggett, Mossie Burglar Alarm Company and Mossie Electric Protection Company	8438a	5554
W41a—Excerpts of deposition testimony of Oliver Tyrrell Joy, Notifier Corporation	8438ppp	5584
—Exhibit A	8438jjjjjj	5627
W42a—Excerpts of deposition testimony of Michael Singel, Security Alarm	8440	5631
W43a—Excerpts of deposition testimony of Mary B. Nordsiek, Nordsiek Protection Service	8474	5647
W44a—Excerpts of deposition testimony of Morris J. Amsrud, Suburban Patrol Service Corporation	8491	5652
W45a—Excerpts of deposition testimony of Robert E. Leeper, United States Burglar Alarm Company, Incorporated	8501	5656
W46a—Excerpts of deposition testimony of Victor R. Zahn, Victor Burglar Alarm Company	8569	5684
W47a—Excerpts of deposition testimony of Henry A. Walters, WECO and Ace Alarm Company	8648	5722

[fol. 1]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

Attorneys for plaintiff: Joseph Mainelli, U.S. Atty., Raymond J. Pettine, U.S. Atty., Noel E. Story, Esq., Robert G. Levy, Esq., Hugh P. Morrison, Jr., Esq.

Attorneys for Defendant: Matthew W. Goring, Esq., Roger T. Clapp, Esq., Denis G. McInerney, Esq.

UNITED STATES OF AMERICA,

v.

GRINNELL CORPORATION; AMERICAN DISTRICT TELEGRAPH COMPANY; HOLMES ELECTRIC PROTECTIVE COMPANY; AND AUTOMATIC FIRE ALARM COMPANY OF DELAWARE.

C. A. # 2785

Anti-Trust Action

Date	Defendant's Account	Received	Disbursed
1965			
Jan. 25	Holmes Elec.—Notice of Appeal	5.00	
Jan. 25	Grinnell Corp.—Notice of Appeal	5.00	
Jan. 25	Automatic Fire Alarm Co.—Notice of Appeal	5.00	
Jan. 26	ADT—Notice of Appeal	5.00	
Jan. 29	Deposit		20.00

[fol. 2] DOCKET ENTRIES

Date	
1961	
April 13	Complaint filed together with appearance of Joseph Mainelli, U.S. Atty. for Pltff. Amount reported in Emolument Returns, U.S. $15.00.
	Summons issued returnable within 20 days after service.
	Pltff's Motion re issuance of summons, etc. together with Order thereon re issuance of summons, etc. entered and filed.
Apr. 17	Continued to Next Term.
18	Summons returned duly served and filed as to Deft., Grinnell Corporation. Unable to locate Deft., American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware in this District.
21	Appearance of Roger T. Clapp, Esq. for Deft., Grinnell Corporation, filed.
	Appearance of Matthew W. Goring, Esq. for Defts., American District Telegraph Company, Holmes Electric Protective Comapny and Automatic Fire Alarm Company of Delaware, filed.
	U.S. Marshal's return of service of summons as to Defts., American District Telegraph Company, Homles Electric Protective Company and Automatic Fire Alarm Company of Delaware duly noted and filed.
26	Designation of District Judge For Service In Another District Within His Circuit filed. Chief Judge, Peter Woodbury, First Circuit designates and assigns the Hon. George C. Sweeney, Chief Judge of the U.S. District Court for the District of Mass. to sit, etc.
	Appearance of Raymond J. Pettine, U.S. Atty. for Pltff. filed.
28	Entire original file together with copy of docket entries mailed to Hon. George C. Sweeney, Chief Judge, U.S. District Court Boston, Mass.

DOCKET ENTRIES

Date	
1961	
May 1	Appearance of Noel E. Story, Esq., Antitrust Division, Dept. of Justice, Wash. D. C. for Pltff. filed.
	Motion of Deft., Grinnell Corporation for extension of time to file answer, etc. to June 5, 1961 filed.
	Motion of Defts., American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware for extension of time to file answer, etc. to June 5, 1961 filed.
June 5	Motion of Deft., Grinnell Corporation for extension of time to file answer, etc. to July 5, 1961 granted and filed.
[fol. 3]	
	Motion of Defts., American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware to file answer, etc. to July 5, 1961 granted and filed.
June 30	Defendants' Interrogatories with Notice filed.
July 3	Answers of following Defendants filed: Automatic Fire Alarm Company of Delaware, Holmes Electric Protective Company, and American District Telegraph Company.
5	Answer of the defendant Grinnell Corporation filed.
July 10	Defendants' Notice to Take Deposition (3) of Co-operative Burglary Protection Co., Suburban Patrol Service Corp. and Kedzie Protective Patrol filed.
13	Interrogatories Propounded by the Pltff. to Grinnell Corporation filed.
	Interrogatories Propounded by the Pltff. to American District Telegraph Company filed.
	Interrogatories Propounded by the Pltff. to Holmes Electric Protective Company filed.
	Interrogatories Propounded by the Pltff. to Automatic Fire Alarm Company of Delaware filed.

DOCKET ENTRIES

Date	
1961	
July 13	Pltff's Notice of Motion For The Production of Documents, Motion For Production of Documents, Affidavit and Memorandum in Support of Motion For Production of Documents, Affidavit of Service as to Grinnell Corporation filed.
	Pltff's Notice of Motion For The Production of Documents, Motion For Production of Documents, Affidavit and Memorandum in Support of Motion For Production of Documents, Affidavit of Service as to American District Telegraph Company filed.
	Pltff's Notice of Motion For The Production of Documents, Motion For Production of Documents, Affidavit and Memorandum in Support of Motion For Production of Documents, Affidavit of Service as to Holmes Electric Protective Company filed.
	Pltff's Notice of Motion For The Production of Documents, Motion For Production of Documents, Affidavit and Memorandum in Support of Motion For Production of Documents, Affidavit of Service as to Automatic Fire Alarm Company of Delaware filed.
28	Motion of Deft., Grinnell Corporation for extension of time to file answer, etc. to Interrogatories, etc. to October 23, 1961 granted and filed.
[fol. 4]	
	Motion of Defts., American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware to file answer, etc. to Interrogatories, etc. to October 23, 1961 granted and filed.
31	Motion of Pltff. to extend time to object of answer Interrogatories of Defts., American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware to October 16, 1961 granted and filed.

DOCKET ENTRIES

Date	
1961	
Aug. 7	Notice to Take Deposition filed by Defts., American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware.
8	Notice to Take Deposition filed by Defendants American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware (3).
15	Defendants' Notice to Take Deposition—Defendants American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware—of Morse Signal Devices, Inc. filed.
16	Defendants Notice of Taking Depositions Upon Written Interrogatories, on behalf of American District Telegraphy Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware filed.
17	Defendants—American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company Delaware—Notice of Taking Depositions upon Written Interrogatories filed.
21	3 Notices of Taking Depositions filed by Defts., American District Telegraph Company, Holmes Electric Protective Company, and Automatic Fire Alarm Company of Delaware. Notice of Taking Depositions Upon Written Interrogatories filed by Defts., American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware.
28	Pltff's Notice of Taking Depositions Upon Written Interrogatories, etc. filed.
Sept. 1	Notice of Taking Depositions Upon Written Interrogatories filed by Defts., American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware.

DOCKET ENTRIES

[fol. 5]

Date	
1961	
Sept. 8	Notice to Take Depositions filed by Defts., American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware.
15	Defendants' Notice to Take Depositions of Protection Engineering Corp., 7515 North 7th Street, Los Angeles, California, Central Burglar Alarm Service, 1114 West 2nd St., Los Angeles, Cal., Gerber & Company, Inc. 311 North Verdugo Rd., Glendale, Cal. filed.
18	Notice to Take Depositsions filed by Defts., American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware. Pltff's Notice of Taking Depositions Upon Written Interrogatories filed. Notice To Take Deposition filed by Defts., American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware.
22	2 Notices to Take Depositions filed by Defts., American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware. Deposition of Henry A. Walters filed. Pltff's Objection to Notice For Taking Deposition of Witnesses Upon Written Interrogatories filed.
29	Notice To Take Depositions filed by Defts., American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware filed.
Oct. 6	Stipulation re Interrogatories, etc. filed. Deposition of Arthur T. Orner filed. Deposition of Joseph Siegel filed. Deposition of Michael Singel filed.

DOCKET ENTRIES

Date	
1961	
Oct. 13	Depositions of Arthur W. Fruh, Joseph E. Cunningham, Jr., Ruth Moran and Carl Marlow, D. B. Robertson filed.
16	Depositions of Clarence W. Novak, William F. Streit, Jack J. Zimmerman, Daniel Reames, O. G. Ilgner, Joseph K. Aberle, Edward A. Petrosius, Fred Levine, Irwin Marks, M. I. Brod, Harry Kaufman, Marvin Marks filed.
	Memorandum in Support of Pltff's Objections to Certain Interrogatories Propounded by Defts. American District Telegraph Company, Automatic Fire
[fol. 6]	Alarm Company of Delaware and Holmes Electric Protective Company filed.
	Pltff's Answers to Interrogatories Propounded by Defts. filed.
Oct. 16	Continued to Next Term.
18	Deposition of William A. Satek filed.
24	Answers to Interrogatories filed by Deft., American District Telegraph Company.
	Answers to Interrogatories filed by Deft., Automatic Fire Alarm Company of Delaware.
	Answers to Interrogatories filed by Deft., Holmes Electric Protective Company.
	Notice of Hearing and Objections to Government Interrogatories Addressed to American District Telegraph Company filed by said Deft.
	Notice of Hearing and Objections to Government Interrogatories Addressed to Holmes Electric Protective Company filed by said Deft.
	Notice of Hearing and Objections to Government Interrogatories Addressed to Automatic Fire Alarm Company of Delaware filed by said Deft.
30	Answers of Grinnell Corporation to Interrogatories filed.

DOCKET ENTRIES

Date	
1961	
Nov. 3	Depositions of Henry J. Poile, Morris J. Amsrud and Josephine Langner filed.
20	Notice of Motion and Motion re orders under Rule 37(a) and (d) filed by Defts., American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware.
	Memorandum of Defts., American District Telegraphy Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware in Opposition to Pltff's Objections to Interrogatories and in Support of Deft's Motion For An Order Compelling Further Answers and Directing Preclusion of Proof filed.
21	Affidavit In Opposition To Gover's Motion For Production of Documents filed by Frank A. Fritz.
	Affidavit In Opposition To Govt's Motion For Production Of Documents filed by Frank A. Fritz.
	Affidavit In Opposition to Govt's Motion For Production Of Documents filed by Frank A. Fritz.
	Memorandum in Behalf of Defts' American District Telegraph Company, Holmes Electric Protective
[fol. 7]	
	Company and Automatic Fire Alarm Company of Delaware in Opposition to Govt's Motion For Production of Documents filed.
24	Pltff's Memorandum in Reply to Objections of Defts., American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware to Certain Interrogatories Propounded by Pltff. filed.
	Notice to Take Deposition filed by Defts., American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware filed.
	Notice to Take Depositions filed by Defts., American District Telegraph Company, Holmes Electric Protective Company and Auotmatic Fire Alarm Company of Delaware filed.

DOCKET ENTRIES

Date		
1961		
Dec.	4	7 Pltff's Notices of Taking of Depositions filed.
	7	4 Notices to Take Deposition filed by Defts., American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware.
	11	Memorandum of Pltff. in Support of Pltff's Motion For the Production of Documents, In Opposition to Deft's Motion For An Order Compelling Further Answers to Interrogatories and In Response to Deft's Memorandum in Opposition to Pltff's Objections to Interrogatories filed.
	12	Reply of Defts. American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware to Memorandum of Pltff. in Support of Pltff's Motions For The Production of Documents, In Opposition to Defts. Motion For An Order Compelling Further Answers to Interrogatories and In Response to Defts. Memorandum In Opposition to Pltff's Objections to Interrogatories filed.
	19	2 Deposition Subpoenas of Defts., American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware returned duly served and filed.
	21	Interrogatories with Notice filed by American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware.
	29	Deposition of Eric David filed.
		Deposition of Jack Silverman filed.
[fol. 8]		
1962		
Jan.	4	Notice to Take Depositions filed by Defts., American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware.
		Appearance of Robert G. Levy, Esq. for Pltff. filed.

DOCKET ENTRIES

Date		
1962		
Jan.	4	Pltff's Notice of Hearing together with Objections to Additional Interrogatories Propounded by Defts., American District Telegraph Company, Automatic Fire Alarm Company of Delaware and Holmes Electric Protective Company filed.
		Memorandum on Behalf of Pltff., United States of America, In Opposition to Additional Interrogatories Propounded by Defts., American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware filed.
	5	Notice For Filing Depositsions filed by Defts., American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware as to Henry A. Walters, Arthur T. Orner, Joseph Siegel, Michael Singel, Arthur W. Fruh, Joseph E. Cunningham, Jr., Ruth Moran, Carl Marlow, D. B. Robertson, Clarence W. Novak, William F. Streit, Jack J. Zimmerman, Daniel Reannies, O. G. Ilgner, Joseph K. Aberle, Edward A. Petrosius, Fred Levine, Irwin Marks, M. I. Brod, Harry Kaufman, Marvin Marks, William A. Satek, Henry J. Poile, Morris J. Amsrud, Josephine Langner, Eric David and Jack Silverman.
	8	Deposition Subpoena returned duly served and filed as to M. G. Sondeck, etc.
		Deposition Subpoena returned duly served and filed as to James H. Bray, etc. filed.
		Deposition Subpoena returned duly served and filed as to Curtis Dillard, etc.
		Deposition Subpoena returned duly served and filed as to James W. Flatron, etc. filed.
		Depositions of Gerald J. Linder, Robert E. Leeper and Joseph G. Wilson filed.
	9	Amended Notice To Take Deposition filed by Defts., American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware.

DOCKET ENTRIES

Date	
1962	
Jan. 11	Notice of Filing Depositions filed by Defts., American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm
[fol. 9]	Company of Delaware as to Robert E. Leeper, Gerald J. Linder and Joseph G. Wilson. Notice to Take Deposition filed by Defts., American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware.
15	Depositions of Morris F. Weinstock and Arthur E. Weiss filed.
18	Notice of Withdrawal of Deposition filed by Defts., American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware.
24	Memorandum filed by Chief Judge Sweeney covering all objections and motions filed through December 21, 1961 (Copy given to Raymond J. Pettine, U.S. Atty. and 2 copies given to Matthew W. Goring, Esq.)
25	3 Deposition Subpoenas returned duly ser-ed and filed of Defts., American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware. 1 Pltff's Subpoena returned duly served and filed.
Feb. 1	Notice of Deposition filed by Defts., American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware.
5	Depositions of Clifford T. Davis and Harry Gerber filed.
12	Deposition of Alec Venners filed.
21	Depositions of Harold S. Smith and Thomas F. Smith filed.

DOCKET ENTRIES

Date	
1962	
Feb. 26	Depositions of Thomas M. Lewin and Lyle A. Vadnais filed.
	Pltff's Memorandum in Opposition to Proposed Counter-Order Of Defts. American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware filed.
Mar. 1	Pltff's Motion to Limit the Scope of Examination Pursuant to Rule 30(b), etc. together with Notice of Motion, etc. filed.
7	Received and filed a letter from Hon. George C. Sweeney, Chief Judge, U.S. District Court for Dist. of Massachusetts notifying that he has withdrawn from the above entitled case, etc.
	Answers to Interrogatories filed by American District Telegraph Company.
	Answers to Interrogatories filed by Automatic Fire Alarm Company of Delaware.
[fol. 10]	
	Answers to Interrogatories filed by Holmes Electric Protective Company.
	Pltff's Further Answers to Interrogatories Propounded by Defts., American District Telegraph Company, Automatic Fire Alarm Company and Holmes Electric Protective Company filed.
8	Depositions of Gordon Dillard and James H. Bray filed.
13	Revocation of Designation of District Judge (Honorable George C. Sweeney) For Service in Another District Within His Circuit entered and filed.
	Designation of District Judge (Honorable Charles E. Wyzanski, Jr.) For Service in Another District Within His Circuit entered and filed.
26	Affidavit of Boyd B. Henry, Jr. filed.
	Memorandum in Support of Govt's Proposed Order For Requiring Production of Documents at the United States Attorney's Office in New York City filed.

DOCKET ENTRIES

Date	
1962	
Apr. 3	Deposition of Kenneth M. Holmes field.
4	Order received from Judge Wyzanski and filed.—together with Letter.
	Docket entries received from Judge Wyzanski as follows:
	Apr. 3—Wyzanski, J. Hearing on government motion to settle form of order for production of documents; Order dictated; Order entered; defts to produce documents at their respective offices in NY, commencing Apr 16 62 and continuing until May 18 62, etc.
	3—Wyzanski, J. Hearing on government motion to limit scope of examination pursuant to R 30(b), FRCP; denied.
	3—Wyzanski, J. Hearing on government motion to quash subpae duces tecum; denied.
	3—Notice mailed to Clerk, USDC, Dist. of RI, Providence 3, RI on rulings together with copy of Order. Copy of Order furnished Messrs Story, Clapp, Fritz, Conkling, Williams, Goring.
13	Reporter's Transcript (Thomas H. Ford) of hearing before Judge Wyzanki in Boston, Mass. on April 3 1962 filed.
	Deposition of Grant Richard Hamilton filed.
	Deposition of Harold Willar Lewis filed.
	Deposition of Kenneth Sumner McFarland, Jr. filed.
[fol. 11]	
16	Continued to Next Term.
	Deposition of Everett Westphal filed.
24	Deposition of Harold W. Gray, Jr. filed.
May 2	Deposition of Mary B. Nordsiek filed.
	Deposition of Fred Nordsiek filed.
3	Deposition of Walter W. Richardson filed.
7	Deposition of Clarence F. Baker filed.

DOCKET ENTRIES

Date	
1962	
May 28	Deposition of Loys C. Bridges filed.
June 5	Notice For Filing Depositions filed by Defts., American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware.
12	Notice to Take Deposition filed by Defts., American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware.
14	Deposition of Clarence C. Spahlinger filed. Deposition of Gerald R. De Lue filed. Deposition of Sarah E. Jackson filed.
15	Deposition of Harold S. Leich filed.
July 6	Deposition of John Daniel Brosnan filed.
27	Deposition of Maurice Gerson Sondock filed.
Aug. 2	Deposition of George A. Smith, Volume I and II filed.
3	Deposition of Clarence Stanley Damon filed.
Aug. 20	12 Notices of Taking of Deposition filed by Pltff.
22	Pltff's Notice of Taking of Deposition filed.
27	Certificate of Service filed by Pltff.
Sept. 10	Notice to Take Deposition filed by Defts., American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware.
Oct. 4	Notice to Take Deposition filed by Defts., American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware.
8	Deposition of Emerson M. Booher filed. Deposition of Ephraim B. Oberlander filed.
Oct. 15	Continued to next term.
16	Order In Regard To Taking Of Depositions re Elizabeth O'Keefe received from Judge Wyzanski and filed.

DOCKET ENTRIES

Date	
1962	
Oct. 25	Notice To Take Deposition filed by Defts., American District Telegraph Company, Holmes Electric Pro-
[fol. 12]	
	tective Company and Automatic Fire Alarm Company of Delaware.
30	Stipulation re information furnished by the General Services Administration, etc. filed.
Nov. 1	Received letter from Judge Wyzanski dated October 31, 1962 stating he had made the following notation on above stipulation: "Approved Oct. 31, 1962, C. E. Wyzanski, Jr., U.S.D.J.".
16	Deposition of Thomas L. Lugen filed.
19	Deposition of Ralph C. Peabody filed.
30	Deposition of Maurice Gerson Sandock filed.
Dec. 13	Pltff's Notice of the Filing of Depositions (10) filed.
17	Deposition of Peter J. Newmann, Albany, N.Y. filed.
	Deposition of John S. Nacey filed.
	Deposition of Arthur A. Schwartz filed.
	Deposition of George J. Kusta filed.
31	Notice of Motion to Bring on For a Hearing the Suspension of Depositions by Defts., American District Telegraph Company, Holmes Electric Protective Company and the Automatic Fire Alarm Company of Delaware together with Affidavit of Noel E. Story filed by Pltff.
	Memorandum in Support of the Govt's Motion to Bring On For a Hearing the Suspension of Depositions by Defts., American District Telegraph Company, Holmes Electric Protective Company and The Automatic Fire Alarm Company of Delaware filed.

DOCKET ENTRIES

Date	
1963	
Jan. 9	Memorandum In Behalf of Defts., American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware Responding to the Govt's Motion For A Hearing filed.
14	Order received and filed from Judge Wyzanski re Pltff's motion in regard to the suspension of depositions and on its request for some pre-trial rulings, etc.
24	Received and filed from Judge Wyzanski the following: Copy of Order of January 10, 1963 re suspension of depositions, etc. Order re quashing certain subpoenas duces tecum, etc. Appearance of Denis G. McInerney for Deft., Grinnell Corporation. (4 Letters) Reporter's Transcript of hearing on January 10, 1963.
[fol. 13]	
	Depositions of Benjamin H. Call and Joe Forman filed.
25	Notice of Deposition filed by Defts., American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware.
Feb. 4	Deposition of Milton Pierce filed. Deposition of Claude L. Carpenter filed. Deposition of Frank W. Houghton filed. Pltff's Notice of Taking of Deposition filed. 1 Subpoena issued. 1 Pltff's Deposition Subpoena returned duly served and filed. Pltff's Certificate and Additional Interrogatories to Deft., Grinnell Corporation together with Additional Motion For Production of Documents to Deft., Grinnell Corporation filed.

DOCKET ENTRIES

Date	
1963	
Feb. 4	Pltff's Certificate and Additional Interrogatories and Additional Motions For Production of Documents to Defts., American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware filed.
	Affidavit on Support of the Govt's Additional Motions For The Production of Documents Addressed to Defts., Grinnell Corporation, American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware filed.
	Pltff's Notice of Taking of Deposition filed.
	Pltff's Notice of Taking of Deposition filed.
20	Stipulation extending time to February 25, 1963 for Defts to advise Govt. counsel whether they will interpose any objections of the "additional interrogatories propounded by the Pltff", etc. filed. (to be entered by Judge Wyzanski)
27	Deposition of James E. Rose filed.
28	Stipulation extending time to March 6, 1963 for Defts. to advise Govt. counsel whether they will interpose any objections of the "additional interrogatories propounded by the Pltff", etc. filed. (to be entered by Judge Wyzanski)
Mar. 7	Pltff's Notice of Taking of Deposition Upon Written Interrogatories filed.
	Pltff's Notice of Taking of Deposition Upon Written Interrogatories filed.
	Pltff's Notice of Taking of Deposition Upon Written Interrogatories filed.
[fol. 14]	
	Pltff's Notice of Taking of Deposition Upon Written Interrogatories filed.
	Appearance of Hugh P. Morrison, Jr., Esq., Attorney, Antitrust Division, U.S. Dept. of Justice, for Pltff. filed.

DOCKET ENTRIES

Date	
1963	
Mar. 11	Notice of Motion to Vacate Pltff's Notice of Deposition together with Affidavit of Averill M. Williams, etc. filed by Defts., American District Telegraph Company, Holmes Electric Protective Company, Automatic Fire Alarm Company of Delaware filed.
15	Order entered and filed re Defts' objections to production of documents, etc.
19	Notice of Motion to Vacate Pltff's Notices of Deposition filed on March 11, 1963 is marked— Waived in open Court March 13, 1963 Wyzanski 3–13–63, and filed.
20	Deposition of Morton Baizer filed.
21	Plaintiff's Notice of the Filing of Depositions filed.
22	Notice of Taking Depositions Upon Written Interrogatories, etc. filed by Defts., American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware.
Apr. 1	Stipulation extending date by which Deft., Grinnell Corporation must answer the Additional Interrogatories, etc. to May 1, 1963 filed.
5	Answers of Grinnell Corporation to Additional Interrogatories Propounded by Pltff. filed.
12	Notice of Deposition filed by Defts., American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware.
Apr. 15	Continued to next term.
18	Stipulation re Production of Additional Documents by ADT, Holmes and AFA approved and filed.
25	Pltff's Notice of Taking Deposition Upon Written Interrogatories filed.
26	Pltff's Notice of Taking Deposition Upon Written Interrogatories filed.

DOCKET ENTRIES

Date	
1963	
May 3	4 Notices of Taking of Deposition Upon Written Interrogatories (Defendants Cross-Interrogatories) filed by Defts., American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware.
[fol. 15]	
16	Answers of Automatic Fire Alarm Company of Delaware to additional Interrogatories served on it on January 31, 1963 filed.
17	Holmes' Answers to Additional Interrogatories filed.
20	ADT's Answers to Additional Interrogatories filed.
22	Pltff's Notice of Taking of Deposition filed.
	Pltff's Notice of Taking of Deposition filed.
29	Notice of Taking Deposition filed by Defts., American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware.
31	2 Notices of Taking Deposition filed by Defts., American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware.
June 3	Answers of the Pltff. to Interrogatories filed.
10	Deposition of Lee C. Underdown filed.
19	Notice of Taking Deposition filed by Defts., American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware.
27	Third Set of Interrogatories Propounded by Pltff. to American District Telegraph Company, Automatic Fire Alarm Company of Delaware and Holmes Electric Protective Company filed.
28	Amended Notice of Taking Deposition filed by Defts., American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware.
	Deposition of Roy Van Wagner filed.

DOCKET ENTRIES

Date		
1963		
July	1	Deposition of Samuel G. Wight filed.
	9	Requests for Admissions filed by Defts., American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware.
	15	Answer of AFA to "Third Set of Interrogatories Propounded by the Plaintiff" filed. Answer of Holmes to "Third Set of Interrogatories Propounded by the Plaintiff" filed. Answer of ADT to "Third Set of Interrogatories Propounded by the Plaintiff" filed. Depositions upon Written Interrogatories of Lyle Underdown, etc. and Joe B. Underdown, etc. filed.
	22	Pltff's Answers to Deft's Request For Admissions filed.
	25	Pltff's Notice of Taking of Deposition filed.
[fol. 16]		
	29	Government's Amended Notice of Taking of Deposition filed Deposition Subpoena issued Deposition of Ira B. Warlick filed. Government's notice of withdrawal of Notice of Deposition filed. Government's Stipulation for extension with respect to Request for Admission—filed.
	30	Deposition Subpoena returned duly served and filed (1)
Aug.	2	Deposition of Freddie Schnell filed.
	2	Notice of Taking of Deposition filed by Defts. American Dist. Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware. 1 Deposition Subpoeana issued. Deposition of Thaddeus M. Wilhelm filed.
	5	Certified copy of Deposition Subpoena to Charles C. Porch returned duly served and filed.

DOCKET ENTRIES

Date	
1963	
Aug. 8	Deft's Notice of Taking Deposition upon Written Interrogatories filed (2)
	Stipulation re revenue figures entered and filed (Entered 8/9/63)
12	Defts' Amer. Dist. Telegraph Co., Holmes Electric Protective Co. and Automatic Fire Alarm Co. of Delaware Notice of Deposition on Written Interrogatories filed, and Notice of Deposition filed.
	Plaintiff's Notice of Taking of Deposition filed.
15	Deposition of Donald Dutton Pillsbury filed.
	Deposition of Francois E. Guibert filed.
	Deposition of Francois E. Guibert filed.
19	2 Notice of Taking of Deposition Upon Written Interrogatories (Pltff's Cross Interrogatories) filed by Pltff.
21	Notice of Taking of Deposition Upon Written Interrogatories (Pltff's Cross Interrogatories) filed by Pltff.
23	Deposition of Russell W. Laxson filed.
26	Deposition of Victor R. Zahn filed.
28	Stipulation entered and filed re affidavit of Roy Van Wagner, etc.
30	Deposition of Irevin J. Rosenberg filed.
Sept. 5	Deposition of Gerson Zimmerman filed.
6	Deposition of Albert Wayne Jackson filed.
19	Deposition of R. Stafford Edwards filed.
Oct. 2	Deposition of George F. Allebach (2 Vols) filed together with envelope of exhibits.
[fol. 17]	
Oct. 14	Depositions of Robert Hall Clothes, IBM, Howard Stores Corp. filed.
14	Continued to next term.
Nov. 12	Deposition of Sidney Stackler filed.
18	Reporter's Transcript of hearing on March 13, 1963 filed.
	Deposition and exhibits of Henry G. Clark filed.
Dec. 23	Order entered and filed re transcripts, trial briefs, etc.

DOCKET ENTRIES

Date	
1964	
Jan. 29	Designation of Documents Upon Which Pltff. Will Rely in Its Case-In-Chief and A Statement Of The Main Issues To Which Each Document Primarily Relates filed.
	Designation Of Pages Or Portions Of Pages Of Transcripts Of Depositions Upon Which Pltff. Will Rely In Its Case-In-Chief filed.
	Designation of Answers Of The Grinnell Corporation To Interrogatories Propounded By Pltff. filed.
	Designation Of Answers Of The American District Telegraph Company To Interrogatories Propounded By Pltff. filed.
	Designation Of Answers Of The Automatic Fire Alarm Company of Delaware To Interrogatories Propounded By Pltff. filed.
	Designation Of Answers Of The Holmes Electric Protective Company To Interrogatories Propounded By Pltff. filed.
	Trial Brief For The United States filed.
	Certificate of serving of above documents, etc. filed.
Feb. 14	Pltff's Position as to the Basis of Liability of Each of the Deft. filed.
	Proposed Form of Judgment and Proposed Form of Judgment After Trial filed.
	Certificate of serving of above documents filed.
Mar. 11	Stipulation No. 1, No. 2, No. 3, No. 4, and No. 5 filed together with Appendix A.
Apr. 20	Continued to next term.
May 22	Deposition of Charles C. Porch filed together with envelope containing exhibits in connection with said deposition.
June 1	Notice of Motion together with affidavits of Dennis G. McInerney, Frank A. Fritz, etc. re vacating order setting cause for trial, etc. filed by Defts.
5	Copy of Order received and filed from Judge Wyzanski re motion of June 2, 1964.

DOCKET ENTRIES

Date

1964

[fol. 18]

June 8 Entire original file together with all remaining transcripts, depositions, etc. given to the U.S. Marshal to be transported to the Clerk, U. S. District Court Dist. of Mass., Boston, Mass.

9 Depositions of James H. McDowell and Malcolm Goldstone filed.
Petition and Affidavit of Clarence H. Rison filed.
Notice of Motion and Affidavits of Disqualification of Hon. Charles E. Wyzanski, Jr. on Behalf of Defts., American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware filed.

10 Deposition of George W. Saunders filed.
Deposition of Edward J. Lavino filed.
Deposition of Herman E. Robinson filed.
Deposition of Joseph Forman filed.
Deposition of Eigene Curran filed.
Deposition of Herman E. Robinson in unmarked envelope filed. (Vol I)

11 Deposition of Shelton Phillips filed.
Letter received from Judge Wyzanski together with copies of transcripts of May 28, June 3 and June 9, 1964 and filed.
2 Deft's Subpoena Duces Tecum returned duly served and filed.
Request to Admit filed by Deft., Grinnell Corporation

12 Stipulation No. 6, Stipulation No. 8 and Stipulation No. 9 filed.

15 Copy of Memorandum of Ch. J. Woodbury received and filed.
1 Defts' Witness Subpoena returned duly served and filed.

19 4 Defts' Witness Subpoenas returned duly served and filed.
41 Defts' Subpoenas Duces Tecum returned duly served and filed.

DOCKET ENTRIES

Date	
1964	
June 22	12 Defts' Subpoenas Duces Tecum returned duly served and filed.
24	4 Defts' Witness Subpoenas returned duly served and filed.
	10 Defts' Subpoenas Duces Tecum returned duly served and filed.
25	1 Defts' Witness Subpoena returned duly served and filed.
29	6 Defts' Subpoenas Duces Tecum returned duly served and filed.
July 8	1 Defts' Subpoena Duces Tecum returned, not served, and filed.
15	1 Defts' Witness Subpoena returned duly served and filed.
Sept. 11	Appendix "A" Pltff's Request For Findings of Fact filed.
	Pltff's Post-Trial Brief filed.
	Certificate of Service, etc. filed.
16	Defts' Joint Motion to Correct Transcript filed.
Oct. 2	Pltff's Reply to Defts' Post-Trial Brief filed.
	Certificate of service, etc. filed.

[fol. 19]

Oct. 19	Continued to next term.
Nov. 27	Received from Judge Wyzanski the following at 9:00 A.M.
	Syllabus
	Findings of Fact, Conclusions of Law and Opinions
	Final Decree entered and filed that Defts. are severally and jointly found to have violated Sec. 1 of Sherman Act, etc. Defts. are enjoined from further restraining trade or attempting or combining to restrain trade in that designated market, etc.
	Deft., Grinnell Company, shall file a plan with Court of divesture of stock in each of Ala-m Company Defts., etc.
	James D. Fleming shall no longer be employed by any of Defts., etc.

DOCKET EBTRIES

Date	
1964	
Nov. 27	Defts. shall pay the costs of this case, etc. Jurisdiction is restrained, etc. Letter setting out errors in the papers received and filed by phone at 9:05 A.M.
1965	
Jan. 25	Notice of Appeal to the Supreme Court of the United States filed by Pltff. (Copy of said Notice mailed to Matthew W. Goring, Esq. and Roger T. Clapp, Esq.) Notice of Appeal to the Supreme Court of the United States filed by Deft., Grinnel Corporation. (Copy of said Notice mailed to Raymond J. Pettine, U.S. Atty.) Notice of Appeal to the Supreme Court of the United States filed by Deft., Holmes Electric Protective Company. (Copy of said Notice mailed to Raymond J. Pettine, U.S. Atty.) Notice of Appeal to the Supreme Court of the United States filed by Deft., Automatic Fire Alarm Company of Delaware. (Copy of said Notice mailed to Raymond J. Pettine, U.S. Atty.)
26	Notice of Appeal to the Supreme Court of the United States filed by Deft., American District Telegraph Company. (Copy of said Notice mailed to Raymond J. Pettine, U.S. Atty.) Record on Appeal together with certified copy of docket entries forwarded to Clerk, U. S. Supreme Court, Washington, D.C.
Feb. 23	Receipt of Raymond J. Pettine for all the boxes containing all the papers, Box No. 1 to Box No. 11, inclusive, filed.
24	Record on Appeal together with certified copy of docket entries forwarded to Clerk, U. S. Supreme Court, Washington, D.C.

DOCKET ENTRIES

Date	
1965	
[fol. 20]	
Mar. 23	Motion For Extension of Time For Docketing Case on Appeal to the Supreme Court of the United States filed. (Copy of letter dated March 22, 1965 from Judge Wyzanski to Noel E. Story re extension of time filed)
May 21	Certified copy of Order of Supreme Court of the United States noting probable jurisdiction, etc. received and filed.
[fol. 21]	
May 28	Wyzanski, J. Pretrial Conference had: Robt L. Donnelly, Esq of New York bar presented to Court by Mr. Fritz. On application to keep secret certain documents, denied after hearing. Trial date Monday, June 15, 1964, 10 am.
June 1	Court reporter's transcript of proceedings May 28, 64, filed.
3	Wyzanski, J. Hearing on defendants' motion to vacate Order of May 28th, opposed by government denied.
4	Wyzanski, J. Order entered denying motion to postpone trial date and limit relief available to the govt. Copy mailed to all counsel and to Clerk at RI.
4	Wyzanski, J. Court directs deputy clerk Foley to mark for identification any documents anybody desires to have numbered, Friday, June 12, 1964. Copy to Messrs Story, Goring, McInerney, Pettine, Murphy, Clapp, Fritz.
5	Court reporter's transcript of hearing June 3, 64, filed.
9	Wyzanski, J. Motion for Disqualification filed June 2 1964 in Rhode Island: Court quotes provisions of T 28 USC 144; declines any action and refers defendants to Chief Judge Woodbury of Court of Appeals, who assigned him to hear the case.

DOCKET ENTRIES

Date	
1964	
June 9	Filed at Boston, Application of defendant Alarm Cos and affidavit of Frank A Fritz for order under 15 USC 23 (issuance of subpoenas to witnesses outside mileage zone).
9	Filed at Rhode Island, defendant Grinnell's request for admissions.
10	Court reporter's transcript of hearing on disqualification June 9, 1964, filed.
10	Wyzanski, J. Thermofax copy of transcripts of May 28, June 3 and 9 furnished to Clerk at RI and to Judge Woodbury.
11	Woodbury, Ch. J. Ct of Appeals Memorandum filed: Findings and rulings, after hearing on June 11, 1964 on defendants' motions and affidavits re disqualification, that affidavits of bias and prejudice are insufficient in law and fact, and that there is no adequate basis for concluding that Judge Wyzanski is disqualified to proceed further in the case. Copy mailed to Clerk, R I.
12	Wyzanski, J. Order entered permitting defendants summons nonresident witnesses beyond 100 miles from place of trial.

[fol. 22]

June 15	Wyzanski, J. Hearing on government motions to quash subpenas duces tecum to *Pettine;* written and oral motions granted in full. Court adopts each different reason set out by government in motion.

Trial

June 15	Wyzanski, J. First Day Trial without jury begins; government offers exhibits 1 through 307 in bulk; defendants heard in opposition; objections overruled. 1–307 admitted in toto. Court quashes trial subpena to witness *Leich* after receipt of his letter and doctor's report and after withdrawal of subpena by counsel.

DOCKET ENTRIES

Date

1964

June 15 Hearing on objections to admission of govt exhibit 335 for identification (Leich dep); withdrawn by govt. Hearing on defendants' objections (set out in A, B and C–1 thru 5 for ident) to certain govt exhibits; Court addresses counsel on these objections and overrules all at this time; will consider all objections at time of draft of rulings; government rests. At close of plaintiff's case, defendant *Alarm Companies* move to dismiss; denied; defendant *Grinnell* moves to dismiss; denied; adjourned to Tues June 16.

16 Wyzanski, J. Second Day
Nonjury trial continues; evidence; testimony *Schultz* re matters prior to 1945, struck; further evidence; adjourned to June 17.

17 Wyzanski, J. Third Day
Nonjury trial continues; evidence; motion to strike portions testimony witness *Gaston* denied; evidence; motion to strike *Simon* testimony, granted; stipulation entered into re testimony of witness *Elliott*, Fire Chief, City of Everett; evidence; motion to strike portions testimony witness Maxey, denied. Plaintiff's answers to request for admissions by defendant *Grinnell*, filed.
Hearing on govt objections to request No. 2; all requests stand as admitted except insofar as they are denied. Trial adjourned to Monday, June 22, 1964 at 10 am.

22 Wyzanski, J. Fourth Day
Civil nonjury trial continues; evidence; adj. to June 23.

23 Wyzanski, J. Fifth Day
Civil nonjury trial continues; govt motion to strike testimony of witness *Fahey*, denied.
Entire deposition of each deponent from whose deposition defendants excerpted certain portions of testimony, (which excerpts were previously admitted as defendants' W–1 through W–7), admitted

DOCKET ENTRIES

Date	
1964	
June 23	this date and they are marked govt "W–1–a" thru "W–47–a". Govt motion to strike testimony witness Rouse, denied. Evidence for defendants *ADT*, *Holmes Electric* and *AFA*, concludes with testimony of Dr Markham, and said defendant Alarm Companies rest. Adj to June 24, 1964.
[fol. 23]	
June 24	Wyzanski, J. Sixth Day Civil nonjury trial continues; motion of defendants to strike *Forman* exhibit, allowed. Evidence on behalf of defendant *Grinnell* commences; evidence concludes. Grinnell motion to strike certain of govt exhibits, filed and denied. *Briefs* to be served upon opposing parties and filed with clerk by Friday, September 11, 1964; *Reply briefs* to be served on opposite side and filed with clerk by Friday, October 2, 1964; *Oral argument* Friday, October 9, 1964 in Boston.
[fol. 24]	
Sept. 11	Copy of plaintiff's post-trial brief, filed.
11	Copy of Plaintiff's request for findings of fact, "Appendix 'A', filed.
11	Copy of Brief for defendant Grinnell Corporation, filed.
11	Copy of Brief for defendants ADT, Holmes and AFA, filed.
Oct. 2	Copy of plaintiff's reply to defendants' post-trial brief, filed.
2	Copy of Grinnell Corporation's reply brief, filed.
2	Copy of reply brief for defendants ADT, Holmes and AFA, filed.
7	Wyzanski, J. Oral arguments begin and conclude. Advisement.

[fols. 25-25a] [File endorsement omitted].

[fol. 26] IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

Civil Action No. 2785

UNITED STATES OF AMERICA, Plaintiff,

v.

GRINNELL CORPORATION; AMERICAN DISTRICT TELEGRAPH COMPANY; HOLMES ELECTRIC PROTECTIVE COMPANY; and AUTOMATIC FIRE ALARM COMPANY OF DELAWARE, Defendants.

COMPLAINT—Filed April 13, 1961

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action against the above named defendants and complains and alleges as follows:

I

Jurisdiction and Venue

1. This complaint is filed and this action is instituted under Section 4 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209 (15 U.S.C. § 4), as amended, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, in order to prevent and restrain the continuing violations by the defendants, as hereinafter alleged of Sections 1 and 2 of the Sherman Act.

2. The defendant Grinnell Corporation transacts business and is found within the District of Rhode Island.

[fol. 27] II

The Defendants

3. Grinnell Corporation, hereinafter referred to as "Grinnell", a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 260 West Exchange Street, Providence 3, Rhode Island, is hereby made a defendant herein. It is

engaged, among other things, in the manufacture and installation of automatic sprinkler systems, in the manufacture of protection devices, and, directly or through subsidiaries and affiliates, in the business of central station electric protection service.

4. American District Telegraph Company, hereinafter referred to as "ADT", a corporation organized and existing under the laws of the State of New Jersey, with its principal place of business at 155 Sixth Avenue, New York 13, New York, is hereby made a defendant herein. It has a large number of subsidiaries through which it is engaged in the business of central station electric protection service throughout the United States and in Canada, and in the manufacture of protection devices. Approximately 75% of the common stock of ADT is owned by defendant Grinnell. References to ADT hereinafter include subsidiaries of ADT.

5. Holmes Electric Protective Company, hereinafter referred to as "Holmes", a corporation organized and existing under the laws of the State of New York, with its principal place of business at 370 Seventh Avenue, New York 1, New York, is hereby made a defendant herein. It is engaged, among other things, directly or through subsidiaries, in the business of central station electric protection service in New York, New York, Philadelphia, Pennsylvania, and Pittsburgh, Pennsylvania. Holmes is a wholly owned subsidiary of defendant Grinnell.

[fol. 28] 6. Automatic Fire Alarm Company of Delaware, hereinafter referred to as "AFA", a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 120 West 42nd Street, New York, is hereby made a defendant herein. Said defendant is engaged, among other things, directly or through subsidiaries, in the business of central station electric protection service in New York, New York, Philadelphia, Pennsylvania, and in Boston, Massachusetts. Through one of its subsidiaries said defendant is engaged also in the manufacture of protection devices. Approximately 88% of the common stock of AFA is owned by defendant Grinnell.

III

Co-Conspirators

7. Various other persons, firms and corporations not made defendants herein have participated as co-conspirators with the defendants in the offense hereinafter charged and have performed acts and made statements in furtherance thereof. Said co-conspirators include, but are not limited to, subsidiaries and affiliates of the defendants.

IV

Definitions

8. Whenever any of the following terms shall be used in this Complaint it shall be deemed to have the meaning hereinafter defined:

(1) "Central station electric protection service" or "central station protection" means the business of supplying and installing protection devices on the premises of subscribers, maintaining such devices, and furnishing to subscribers protection from fire, burglary or other hazards, through central stations accredited for such service by insurance inspection and rating organizations;

[fol. 29] (2) "Central station" means an installation equipped with signal receiving devices connected by private telephone wires with protection devices installed on the premises of subscribers of central station electric protection service, and staffed by trained operators and guards at all times;

(3) "Protection devices" means detecting devices, coding devices, signal receiving devices, and special equipment and materials used in furnishing central station electric protection service.

V

Trade And Commerce Involved

9. Ever increasing numbers of industrial plants, warehouses, retail stores, offices, and other commercial establishments have been subscribing to central station electric protection service, since the inception of such service in the latter part of the 19th Century. Such service has been recognized as a superior means of minimizing losses by fire, burglary, malfunction of machinery, negligence of personnel, and other hazards. Subscribers to such service whose protection systems have been installed according to approved standards receive from insurers substantial discounts on hazard insurance premiums.

10. When a prospective subscriber requests central station protection service the central station protection company surveys the premises to be protected and determines the number of protection devices required to install the protection system. The cost of the equipment installed and the cost of labor to install the equipment plus overhead expenses is called the installation charge. The installation charge is usually paid by the subscriber when the instal- [fol. 30] lation is completed. Title to the equipment installed in the subscriber's premises is retained by the central station protection company. The subscriber is then charged an annual service charge, payable periodically in advance, which is determined by the number of protection devices in service, line rental costs, and anticipated service and maintenance requirements. The central station protection companies usually obtain contracts for protection service for periods of several years and if the contract is not renewed the central station protection company removes all of the protection devices installed in the subscriber's premises.

11. Central Station electric protection service can be rendered economically only if a substantial number of subscribers or potential subscribers are located in the vicinity of a central station. Extension of such service to subscribers located outside a certain radius is not practicable. Virtually all central stations are located in cities with more than 125,000 inhabitants.

12. Thirty-three central station protection companies

were operating in the United States in 1959, which supplied central station protection service to over 94,000 subscribers in 119 cities throughout the United States. Over $6,000,000 worth of protection devices were used by the central station protection companies for installment of alarm systems in the premises of property owners in 1958, and the income derived from central station protection service in theUnited States in 1958 was in excess of $60,000,000.

13. Defendant ADT is by far the largest central station protection company in the United States and the only central station protection company operating throughout the United States. ADT operates 119 central stations in 114 cities (5 central stations in Chicago and 2 central stations in Cleveland) in 35 states and the District of Columbia. In [fol. 31] the entire United States ADT does more central station protection business than all of its competitors combined. In 1958 ADT had 60,142 subscribers to central station protection service or about 64% of all subscribers in the United States, and it received $42,890,911 in annual service charges or about 72%of the earned revenues from central station protection service in the United States. In 88 cities in which it operates contral stations ADT has no competition from other central station protection companies.

14. Defendant Holmes is the second largest central station protection company in the United States and operates 11 central stations in the New York City area, 2 central stations in Philadelphia, Pennsylvania and 1 central station in Pittsburgh, Pennsylvania. In 1958 Holmes had 14,218 subscribers to central station protection service, or about 15% of all subscribers in the United States. It received $7,521,411 in annual service charges, or about 12% of the earned revenues from central station protection service in the United States.

15. Defendant AFA is the third largest central station protection company in the United States, and operates central stations in New York City, Boston, Massachusetts, and Philadelphia, Pennsylvania. In 1958 AFA had 5,167 subscribers to central station protection service or about 5% of all subscribers in the United States, and it received $3,324,662 in annual service charges or about 5% of the

earned revenues from central station protection service in the United States.

16. Defendant Grinnell controls the defendants ADT, Holmes and AFA through stock ownership and interlocking directorates. Grinnell thus controlled 136 central stations out of a total of about 170 central stations existing in the United States in 1959. The Grinnell controlled companies, in 1959, together had about 79,500 subscribers to central station protection service or about 85% of the subscribers [fol. 32] in the United States, and they received in combined annual service charges about $53,730,000 or about 90% of the total earned yearly revenues from central station protection service in the United States.

17. Those central stations in the United States which are not controlled or operated by defendants are owned and operated by about 30 firms, only two of which own and operate more than one central station each.

18. Defendant Grinnell has approximately 42 automatic sprinkler system contracting offices in various parts of the United States. In negotiating for sales of automatic sprinkler systems, Grinnell's agents solicit also contracts for central station protection service by ADT. Grinnell and AFA supply certain protection devices used in such service, and they receive from ADT certain percentages of the revenues therefrom. Grinnell pays to its agents commissions on central station protection service contracts secured for ADT.

19. Since 1925, defendant ADT has acquired the capital stock or the assets of twenty-two central station protection companies in the United States.

20. Beginning in or about the year 1906, the defendants or their predecessor corporations have entered into various agreements defining areas of the United States in which they would engage in central station protection service; limiting the types of central station protection service which they would supply in certain areas; and providing for joint participation in the installation of certain types of central station protection systems and for dividing the revenues derived therefrom among themselves.

21. Substantial quantities of protection devices manufactured and assembled by ADT in the States of New York and Missouri, by AFA in the State of New York, and by

[fol. 33] Grinnell in various States of the United States, regularly are sold and shipped across state lines to subsidiaries, affiliates, sales offices, or central stations of defendants Grinnell, ADT, and AFA for installation in other states and in foreign countries. Substantial quantities of protection devices and materials produced by other manufacturers located in various states of the United States regularly are sold and shipped across state lines to defendants and to independent central station electric protection service companies located in states other than the state of manufacture.

22. In Washington, D. C., Kansas City, Missouri, St. Louis, Missouri, and in several other cities throughout the United States, central stations, including central stations of defendants, render protection service to subscribers across state lines. The protection devices installed on the premises of such subscribers located in one state are connected through leased telephone wires with central stations located in other states or in the District of Columbia.

23. The operations of defendants' subsidiaries, district sales offices, contracting offices, and central stations located in various states are directed, controlled and supervised by officers and agents of their respective principal offices located in different states. Those subsidiaries, district sales offices and central stations utilize contract forms, price lists and instructions sent from their respective principal offices across state lines, and they, in turn, regularly send to those principal offices reports, proposed contracts, payments, and other communications. Officers and other representatives of those principal offices constantly travel across state lines to and from such subsidiaries, sales offices, contracting offices, and central stations throughout the United States. The activities of defendant ADT's subsidiaries are interrelated, interdependent, and integrated in all of the states of the United States in which they operate.

[fol. 34] 24. Thus, there exists in the central station electric protection service business a substantial regular flow across state lines of equipment, electrical signals, personnel, contracts, correspondence, communications, checks, and other media of credit and exchange. Defendants' business could not be continued but for that part of it which moves back and forth across state lines.

VI

Offenses Charged

25. For many years past and continuing up to and including the date of the filing of this complaint, the defendants and co-conspirators have been engaged in an unlawful combination and conspiracy to restrain and in an unlawful combination and conspiracy to monopolize, and the defendants have attempted to monopolize and have monopolized, the aforesaid interstate trade and commerce in central station electric protection service, in violation of Sections 1 and 2 of the Sherman Act. Defendants are continuing and will continue said offenses unless the relief hereinafter prayed for is granted.

26. The aforesaid combinations and conspiracies to restrain and to monopolize have consisted of a continuing agreement and concert of action among the defendants and co-conspirators, the substantial terms of which have been:

(a) That competition among defendants would be restricted with respect to certain types of protection service and in certain areas;

(b) That sales of protection devices produced by defendants would be restricted;

(c) That defendants would acquire the stock or assets of persons and firms engaged in the business of central station protection service;

(d) That persons and firms whose stock or assets defendants acquired would be prohibited from continuing or resuming the business of central station protection service, for extended periods of time or forever, in all or in large parts of the United States.

[fol. 35] 27. Pursuant to and in effectuation of the aforesaid combinations and conspiracies, attempt to monopolize, and monopolization, the defendants, among other things:

(a) Did those things which, as hereinbefore alleged, they conspired and agreed to do;

(b) Threatened and persuaded actual and potential

competitors not to enter or to discontinue the business of central station electric protection service;

(c) Initiated price wars to injure and destroy competitors in certain areas, and intentionally charged for their services to subscribers less in areas in which competitors operated than in areas in which central stations were operated by defendants only.

VII

Effects

28. The aforesaid offenses have had, among other things, the following effects:

(a) The commerce of central station electric protection service has been unreasonably restrained and monopolized;

(b) Actual and potential competitors of defendants have been excluded and prevented from rendering central station electric protection service;

(c) Competition among defendants has been curtailed and eliminated;

(d) Subscribers to central station electric protection service and purchasers of protection devices have been denied the benefits from a free and competitive market.

[fol. 36]

VIII

Prayer

Wherefore, the plaintiff prays:

1. That the Court adjudge and decree that the defendants have combined and conspired to restrain and to monopolize, have attempted to monopolize, and have monopolized interstate commerce in central station electric protection service, in violation of Sections 1 and 2 of the Sherman Act.

2. That each of the defendants, their officers, directors, agents, and employees, and all persons acting or claiming to act on behalf of the defendants or any of them, be per-

petually enjoined from continuing to carry out, directly or indirectly, the aforesaid combinations and conspiracies to restrain and to monopolize, attempt to monopolize, and monopolization of, the aforesaid interstate commerce in central station electric protection service, and that they be perpetually enjoined from engaging in or participating in practices, contracts, agreements, or understandings, or claiming any rights thereunder, having the purpose or effect of continuing, reviving, or renewing any of the aforesaid offenses or any offenses similar thereto.

3. That defendant Grinnell be required to dispose of all of its capital stock interest in defendant ADT.

4. That defendant ADT be required to divest itself of so much of its assets as may be necessary to assure competition in central station electric protection service on the local level.

5. That defendant ADT be required to divest itself of all manufacturing facilities for protection devices.

6. That the Court enter appropriate orders to assure that each existing and future subscriber may have title to central station protection systems installed on their premises when defendants ADT, Holmes, or AFA have [fol. 37] secured the costs to them of the equipment plus labor plus overhead expense.

7. That defendants ADT, Holmes and AFA be required to limit the term of their central station electric protection service contracts to one year, or insert in all such contracts cancellation clauses allowing subscribers to cancel the contracts, without penalty, after one year or at the end of any subsequent one-year period.

8. That all defendants be required to terminate all agreements between or among themselves and that they be enjoined from continuing to observe provisions contained in agreements previously existing between or among themselves.

9. That the plaintiff have such other and further relief as the nature of the case may require and as the Court may deem just and proper to dissipate the effects of the violations alleged herein and to restore competition in central station electric protection service.

10. That the plaintiff recover its cost of this suit.

Dated: —

Robert F. Kennedy, Attorney General, /s/ Lee Loevinger, Assistant Attorney General, /s/ George H. Schueller, Attorney, Department of Justice, Joseph Mainelli, United States Attorney.

/s/ Noel E. Story, Attorney, Department of Justice.

[fol. 38] In United States District Court

Designation of District Judge for Service in Another District Within His Circuit—April 25, 1961

Whereas the public interest requires the designation and assignment of a district judge from another district to sit temporarily in the United States District Court for the District of Rhode Island to hear a case in which the judge of that court has disqualified himself: NOW, therefore, pursuant to the provisions of Section 292(b) of Title 28, United States Code, I hereby designate and assign the Honorable George C. Sweeney, Chief Judge of the United States District Court for the District of Massachusetts, to sit in the United States District Court for the District of Rhode Island, to hear, consider and decide *United States of America* v. *Grinnell Corporation, American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware,* Civil Action No. 2785.

Peter Woodbury, Chief Judge, First Circuit.

Dated April 25, 1961.

[fol. 38a] [File Endorsement Omitted.]

[fol. 39] IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

Civil Action No. 2785

[Title omitted.]

ANSWER OF DEFENDANT, GRINNELL CORPORATION—Filed July 5, 1961

The defendant, Grinnell Corporation, answering the complaint herein:

First: Admits that plaintiff purports to institute this action under Section 4 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209 (15 U.S.C. § 4), as amended, commonly known as the Sherman Act, and except as so admitted denies each and every allegation contained in Paragraph "1" of the complaint.

Second: Admits the allegations contained in Paragraph "2" of the complaint.

Third: Admits that Grinnell Corporation, hereinafter referred to as Grinnell, is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 260 West Exchange Street, Providence 1, Rhode Island; that it is named a defendant herein; that, among other things, it manufactures and installs automatic sprinkler systems, and has in the past manufactured certain of the protection devices defined in [fol. 40] Paragraph "8" of the complaint, and still is manufacturing the same to a very limited extent; that it owns all or a majority of the stock in the subsidiary corporations named as defendants which are described in Paragraphs Fourth, Fifth and Sixth, herein; and except as so admitted denies each and every allegation contained in Paragraph "3" of the complaint.

Fourth: Admits that American District Telegraph Company, hereinafter referred to as ADT, is a corporation organized and existing under the laws of the State of New New Jersey, with its principal place of business at 155 Sixth Avenue, New York 13, N. Y.; that it is named a defendant herein; that it owns all or a majority of the stock in a number of subsidiary corporations which provide

to subscribers, among other services, central station electric protection service, as that term is defined in Paragraph "8" of the complaint, in certain localities in the United States; that it owns a majority of the stock in a subsidiary corporation which in turn owns stock in other subsidiary corporations which provide to subscribers, among other services, central station electric protection service, as that term is defined in Paragraph "8" of the complaint, in certain localities in Canada; that ADT and a subsidiary corporation of ADT manufacture certain of the protection devices defined in Paragraph "8" of the complaint; that approximately 75% of the common stock of ADT is owned by Grinnell; and except as so admitted denies each and every allegation contained in Paragraph "4" of the complaint.

Fifth: Admits that Holmes Electric Protective Company, hereinafter referred to as Holmes, is a corporation or- [fol. 41] ganized and existing under the laws of the State of New York, with its principal place of business at 370 Seventh Avenue, New York 1, New York; that it is named a defendant herein; that it provides central station electric protection service, as that term is defined in Paragraph "8" of the complaint, in the City of New York; that it owns all of the stock in two subsidiary corporations which provide central station electric protection service, as that term is defined in Paragraph "8" of the complaint, in Philadelphia and Pittsburgh, respectively; that all of the common stock of Holmes is owned by Grinnell; and except as so admitted denies each and every allegation contained in Paragraph "5" of the complaint.

Sixth: Admits that Automatic Fire Alarm Company of Delaware, hereinafter referred to as AFA, is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 120 West Forty-Second Street, New York 36, New York; that it is named a defendant herein; that it owns all or a majority of the stock in a subsidiary corporation which provides central station electric protection service, as that term is defined in Paragraph "8" of the complaint, in the cities of New York, Philadelphia and Boston; that such subsidiary corporation owns all of the stock in a subsidiary corporation which manufactures certain of the protection

devices defined in Paragraph "8" of the complaint; that Grinnell owns approximately 88% of the stock in AFA; and except as so admitted denies each and every allegation contained in Paragraph "6" of the complaint.

[fol. 42] Seventh: Denies each and every allegation contained in Paragraph "7" of the complaint.

Eighth: Denies that the definitions contained in Paragraph "8" of the complaint correspond to the meaning of such terms as generally understood; and alleges that such definitions are artificially and unwarrantedly drawn so as to make it appear that defendants occupy a dominant position in a part of the trade or commerce among the several states, whereas the subject matter of said definitions constitutes only a part of the numerous services, systems, devices, and other means designed to protect against or to minimize losses arising out of fire, burglary or other hazards.

Ninth: Admits that there has been an increase in the number of subscribers to central station electric protection service since the inception of such service; that such service constitutes a means of minimizing losses by fire, burglary, malfunction of machinery, negligence of personnel, and other hazards; and that some subscribers to central station electric protection service receive discounts on insurance premiums; alleges upon information and belief that there has been an increase in the same period in the use of other services, systems, devices and other means designed to protect against or to minimize losses arising out of such hazards; and except as so admitted denies that it has any knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in Paragraph "9" of the complaint.

Tenth: Admits that when one of the other defendants or subsidiaries thereof which provides central station elec- [fol. 43] tric protection service receives an inquiry concerning such service from a prospective subscriber, such defendant or subsidiary in the usual course makes a survey of the premises to be protected and determines the required number and type of protection devices; that an initial charge may include part or all of the cost of the equipment installed, part or all of the cost of labor to install such equipment, plus part or all of overhead expenses;

that some subscribers to such service pay such charge upon installation or before the installation is completed; that Holmes, and subsidiary corporations of Holmes, ADT and AFA, respectively, which provide such service, retain title to the equipment installed on subscribers' premises; that service contracts with such subscribers are, in general, for a period of five years; that upon termination of such contracts Holmes and such sudsidiary corporations of Holmes, ADT and AFA have normally removed certain protection devices previously installed on subscribers' premises; that the annual service charge is in part determined by the number of protection devices in service, telephone line rental costs and service and maintenance requirements; and except as so admitted denies that it has any knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in Paragraph "10" of the complaint.

Eleventh: Admits the allegations contained in the first and second sentences in Paragraph "11" of the complaint; and except as so admitted denies that it has any knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in Paragraph "11" of the complaint.

Twelfth: Denies that it has any knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in Paragraph "12" of the complaint.

[fol. 44] Thirteenth: Admits that subsidiary corporations of ADT operate 119 central stations in 114 different cities in thirty-five states of the United States, and in the District of Columbia, including five in Chicago and two in Cleveland; that in 1958 such subsidiary corporations had an aggregate of 60,142 subscribers to central station electric protection service and received an aggregate of approximately $38,822,000 in annual service charges therefrom; that in 88 cities in which such subsidiary corporations operate central stations there is no competition from others offering central station electric protection service, as that term is defined in Paragraph "8" of the complaint; alleges upon information and belief that in each of said cities there exists competition from numerous other persons, firms and corporations engaged in the furnishing of

services, systems, devices, or other means, designed to afford protection against and to minimize losses arising out of fire, burglary and other hazards; and except as so admitted denies that it has any knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in Paragraph "13" of the complaint.

Fourteenth: Admits that Holmes or its subsidiary corporations operate 14 central stations in the New York City area, Philadelphia and Pittsburgh; admits that in 1958 Holmes and such subsidiary corporations had an aggregate of approximately 14,200 subscribers to central station electric protection service and received an aggregate of approximately $7,500,000 in annual service charges therefrom; and except as so admitted denies that it has any knowledge or information sufficient to form a belief as to [fol. 45] the truth of each and every allegation contained in Paragraph "14" of the complaint.

Fifteenth: Admits that a subsidiary corporation of AFA operates central stations in New York City, Boston and Philadelphia; that in 1958 said subsidiary corporation had 5,167 subscribers to central station electric protection service and that the approximate dollar volume in annual service charges therefrom was $3,324,662; and except as so admitted denies that it has any knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in Paragraph "15" of the complaint.

Sixteenth: Admits that Grinnell owns approximately 75% of the common stock in ADT, all of the common stock in Holmes, approximately 88% of the stock in AFA, and that certain members of the Board of Directors of Grinnell constitute a majority of the members of the Boards of Directors of the other defendants; refers to the admissions contained in Paragraphs Thirteenth through Fifteenth hereof; and except as so admitted denies that it has any knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in Paragraph "16" of the complaint.

Seventeenth: Denies that it has any knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in Paragraph "17" of the complaint.

Eighteenth: Admits that Grinnell has approximately 42

automatic sprinkler system contracting offices in various parts of the United States; that Grinnell has paid commis- [fol. 46] sions to certain of its employees for recommending to third parties certain types of ADT central station electric protection service when such recommendations have resulted in contracts between such third parties and subsidiaries of ADT for such service; that a subsidiary of AFA supplies certain devices used in connection with the furnishing by subsidiaries of ADT of certain types of central station electric protection service in the cities of New York, Philadelphia and Boston and environs and receives a certain percentage of the revenues derived from said service; that Grinnell is now to a very limited extent selling for cash to subsidiaries of ADT certain devices used in connection with the furnishing by such subsidiaries of ADT of certain types of central station electric protection service; but alleges that by virtue of an agreement, in February, 1954, Grinnell sold to subsidiaries of ADT certain devices then used by them in providing protection service under certain agreements with subscribers and for the exact terms and provisions thereof this defendant refers to the original or true copies thereof to be produced upon the trial of this action; and except as so admitted denies that it has any knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in Paragraph "18" of the complaint.

Nineteenth: Admits that since 1925 the capital stock or assets, or certain of the capital stock or assets, of 22 corporations or firms, each of which provided services, systems. devices, or other means designed to protect against or to minimize losses arising out of fire, burglary or other hazards, were acquired by ADT or its subsidiary corpora- [fol. 47] tions; and except as so admitted denies each and every allegation contained in Paragraph "19" of the complaint.

Twentieth: Admits that since about the year 1906 the defendants or their predecessor corporations have entered into certain agreements and for the exact terms and provisions thereof this defendant refers to the original or true copies to be produced upon the trial of this action; and except as so admitted denies each and every allegation contained in Paragraph "20" of the complaint.

Twenty-First: Admits that certain protection devices used in the provision of central station electric protection service are manufactured and assembled by ADT, by a subsidiary corporation of ADT, by Grinnell to a very limited extent, and by a subsidiary corporation of a subsidiary corporation of AFA, and are shipped to various subsidiary corporations of ADT and AFA, respectively; that protection devices, as that term is defined in Paragraph "8" of the complaint, and materials produced by these corporations and other manufacturers in various states are sold and shipped across state lines to subsidiary corporations of ADT and AFA, respectively, and to other enterprises engaged in the provision of central station electric protection service; denies that ADT manufactures or assembles such devices in the States of New York or Missouri, that Grinnell manufactures such devices in various states in the United States, or that AFA manufactures such devices in the State of New York; and except as so admitted or denied, denies that it has any knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in Paragraph "21" of the complaint.

[fol. 48] Twenty-Second: Admits that in Washington, D. C., Kansas City, Missouri, St. Louis, Missouri, and in certain other cities throughout the United States central stations operated by subsidiary corporations of ADT provide central station electric protection service by use of leased telephone wires to some subscribers located within the operating radius of said central stations who, in some instances, are located in different states from that in which said central station is located; and except as so admitted denies that it has any knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in Paragraph "22" of the complaint.

Twenty-Third: Admits that in general the allegations contained in Paragraph "23" are descriptive of certain aspects of the relationship between ADT, AFA, Holmes and their respective subsidiaries; admits that certain of said allegations are descriptive of certain aspects of the relationships between Grinnell and certain of its subsidiaries; and except as so admitted denies each and every allegation contained in Paragraph "23" of the complaint.

Twenty-Fourth: Except as elsewhere admitted in this

answer denies each and every allegation contained in Paragraph "24" of the complaint.

Twenty-Fifth: Denies each and every allegation contained in Paragraph "25", Paragraph "26", subdivisions "(a)" to "(d)" inclusive, Paragraph "27" subdivisions "(a)" to "(c)" inclusive, and Paragraph "28" subdivisions "(a)" to "(d)" inclusive of the complaint.

[fol. 49] For a First Affirmative Defense

Twenty-Sixth: Alleges that prior to 1906 and thereafter the furnishing of central station electric protection service, the furnishing or supply of services, systems, devices, and other means designed to protect against or to minimize losses arising out of fire, burglary or other hazards, and any and all agreements among or between defendants with respects thereto, were and are local and intrastate in character.

For a Second Affirmative Defense

Twenty-Seventh: Alleges that in 1953 any and all agreements among or between the defendants of the nature alleged in the complaint, other than agreements executed in and after 1952 providing merely for the sale of devices, or for the furnishing of devices or central station electric protection service and the disposition of revenues therefrom, had been cancelled or were shortly to expire and any issues arising therefrom became and are now moot.

For a Third Affirmative Defense

Twenty-Eighth: Alleges that prior to 1953 Grinnell had acquired no stock interest in ADT, and that in 1953 Grinnell, to the knowledge of the Antitrust Division of the Department of Justice, withheld its acquisition from Western Union Telegraph Company of 62% of the stock of ADT pending an investigation of said proposed acquisition by the Department; that Grinnell and ADT submitted all information requested by the Department with respect to said proposed acquisition, offered to submit any further [fol. 50] information desired, disclosed the nature and scope of the operations of Grinnell, ADT, Holmes and AFA and their subsidiary corporations, as well as the stock interests of Grinnell in and its control of Holmes

and AFA, and that Grinnell consummated said proposed acquisition and acquired control of ADT only after the investigation was concluded without objection by the Department, and in reliance upon the representation of the Department to that effect.

Twenty-Ninth: Alleges that in 1955 ADT withheld its acquisition of the assets of General Alarm Company of Boston, a company engaged in the furnishing of central station electric protection service in said City and environs, pending the submission to the Antitrust Division of the Department of Justice for its clearance and approval of said proposed acquisition, submitted all information requested by the Department with respect to said proposed acquisition, offered to furnish any further information desired, again disclosed the nature and scope of the operations of Grinnell, ADT, Holmes and AFA and their subsidiary corporations, as well as the stock interests of Grinnell in and its control of ADT, Holmes and AFA, including the stock interests acquired by Grinnell in 1953 and thereafter, and consummated said proposed acquisition only after and in reliance upon the representations by the Department that it intended to take no action with respect to said proposed acquisition.

Thirtieth: That by reason of the foregoing plaintiff may not be heard, in equity and good conscience, to pray for the divestiture demanded in the complaint herein.

[fol. 51] Prayer

Wherefore, defendant Grinnell Corporation prays that the relief demanded in the complaint be denied and that the complaint herein be dismissed as against it.

Dated: July 5, 1961.

/s/ Roger T. Clapp, Secretary and Counsel, Grinnell Corporation, Providence 1, Rhode Island, Attorney for Defendant, Grinnell Corporation.

Of Counsel: Cahill, Gordon, Reindel & Ohl, 80 Pine Street, New York 5, New York.

[fol. 52] Certificate of service [omitted in printing].

[fol. 53] [File endorsement omitted.]

[fol. 54] IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

Civil Action File No. 2785

[Title omitted]

ANSWER OF DEFENDANT AMERICAN DISTRICT TELEGRAPH COMPANY—Filed July 3, 1961

The defendant, American District Telegraph Company, answering the complaint herein:

First: Admits that plaintiff purports to institute this action under Section 4 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209 (15 U.S.C. § 4), as amended, commonly known as the Sherman Act, and except as so admitted denies each and every allegation contained in Paragraph "1" of the complaint.

Second: Admits the allegations contained in Paragraph "2" of the complaint.

Third: Admits, upon information and belief, that Grinnell Corporation, hereinafter referred to as Grinnell, is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 260 West Exchange Street, Providence 1, Rhode Island; that, among other things, it manufactures and installs au-[fol. 55] tomatic sprinkler systems, and has in the past manufactured certain of the protection devices defined in Paragraph "8" of the complaint, and still is manufacturing the same to a very limited extent; that it owns all or a majority of the stock in the subsidiary corporations named as defendants which are described in Paragraphs Fourth, Fifth and Sixth, herein; and except as so admitted denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in Paragraph "3" of the complaint.

Fourth: Admits that American District Telegraph Company, hereinafter referred to as ADT, is a corporation organized and existing under the laws of the State of New Jersey, with its principal place of business at 155 Sixth Avenue, New York 13, N. Y.; that it owns all or a majority of the stock in a number of subsidiary corpora-

tions which provide to subscribers, among other services, central station electric protection service, as that term is defined in Paragraph "8" of the complaint, in certain localities in the United States; that it owns a majority of the stock in a subsidiary corporation which in turn owns stock in other subsidiary corporations which provide to subscribers, among other services, central station electric protection service, as that term is defined in Paragraph "8" of the complaint, in certain localities in Canada; that ADT and a subsidiary corporation of ADT manufacture certain of the protection devices defined in Paragraph "8" of the complaint; that approximately 75% of the common stock of ADT is owned by Grinnell; and except as so ad- [fol. 56] mitted denies each and every allegation contained in Paragraph "4" of the complaint.

Fifth: Admits, upon information and belief, that Holmes Electric Protective Company, hereinafter referred to as Holmes, is a corporation organized and existing under the laws of the State of New York, with its principal place of business at 370 Seventh Avenue, New York 1, New York; that it provides central station electric protection service, as that term is defined in Paragraph "8" of the complaint, in the City of New York; that two subsidiary corporations of Holmes provide central electric protection service, as that term is defined in Paragraph "8" of the complaint, in Philadelphia and Pittsburgh, respectively; that all of the common stock of Holmes is owned by Grinnell; and except as so admitted denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in Paragraph "5" of the complaint.

Sixth: Admits, upon information and belief, that Automatic Fire Alarm Company of Delaware, hereinafter referred to as AFA, is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 120 West Forty-Second Street, New York 36, New York; that a subsidiary corporation of AFA provides central station electric protection service, as that term is defined in Paragraph "8" of the complaint, in the cities of New York, Philadelphia and Boston; that a subsidiary of such subsidiary corporation manufactures certain of the protection devices defined in Paragraph "8" of the complaint; that Grinnell owns all or a majority of

the stock in AFA; and except as so admitted denies knowl-
[fol. 57] edge or information sufficient to form a belief as to the truth of each and every allegation contained in Paragraph "6" of the complaint.

Seventh: Denies each and every allegation contained in Paragraph "7" of the complaint.

Eighth: Denies that the definitions contained in Paragraph "8" of the complaint correspond to the meaning of such terms as generally understood; and alleges that such definitions are artificially and unwarrantedly drawn so as to make it appear that defendants occupy a dominant position in a part of the trade or commerce among the several states, whereas the subject matter of said definitions constitutes only a part of the numerous services, systems, devices, and other means designed to protect against or to minimize losses arising out of fire, burglary or other hazards.

Ninth: Admits that there has been an increase in the number of subscribers to central station electric protection service since the inception of such service; that such service constitutes a means of minimizing losses by fire, burglary, malfunction of machinery, negligence of personnel, and other hazards; and that some subscribers to central station electric protection service receive discounts on insurance premiums; alleges upon information and belief that there has been an increase in the same period in the use of other services, systems, devices and other means designed to protect against or to minimize losses arising out of such hazards; and except as so admitted denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in Para-
[fol. 58] graph "9" of the complaint.

Tenth: Admits that when a prospective subscriber requests central station electric protection service from a subsidiary of ADT, such subsidiary in the usual course makes a survey of the premises to be protected and determines the required number and type of protection devices; that an initial charge is computed, in part, on the basis of the cost of the equipment installed and the cost of labor to install such equipment, plus overhead expenses; that some subscribers to such service pay such charge upon or before completion of the installation; that subsidiaries of ADT, which provide such service, retain title to the

equipment installed on subscribers' premises; that service contracts with such subscribers are, in general, for a period of five years; that upon termination of such contracts, such subsidiaries of ADT have normally removed certain protection devices previously installed on subscribers' premises; that the annual service charge is, in part, determined by the number of protection devices in service, telephone line rental costs and service and maintenance requirements; and except as so admitted denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in Paragraph "10" of the complaint.

Eleventh: Admits the allegations contained in the first and second sentences in Paragraph "11" of the complaint; and except as so admitted denies that it has knowledge or information sufficient to form a belief as to each and every allegation contained in Paragraph "11" of the complaint. [fol. 59] Twelfth: Denies that it has knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in Paragraph "12" of the complaint.

Thirteenth: Admits that subsidiary corporations of ADT operate 119 central stations in 114 different cities in thirty-five states of the United States, and in the District of Columbia, including five in Chicago and two in Cleveland; that in 1958 such subsidiary corporations had an aggregate of 60,142 subscribers to central station electric protection service and received an aggregate of approximately $38,822,000 in annual service charges therefrom; that in 88 cities in which such subsidiary corporations operate central stations there is no competition from others offering central station electric protection service, as that term is defined in Paragraph "8" of the complaint; alleges upon information and belief that in each of said cities there exists competition from numerous other persons, firms and corporations engaged in the furnishing of services, systems, devices, or other means, designed to afford protection against and to minimize losses arising out of fire, burglary and other hazards; and except as so admitted denies that it has knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in Paragraph "13" of the complaint.

Fourteenth: Admits, upon information and belief, that

Holmes or its subsidiary corporations operate central stations in the New York City area, Philadelphia and Pittsburgh; and except as so admitted denies that it has knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in Paragraph "14" of the complaint.

[fol. 60] Fifteenth: Admits, upon information and belief, that a subsidiary corporation of AFA operates central stations in New York City, Boston and Philadelphia; and except as so admitted denies that it has knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in Paragraph "15" of the complaint.

Sixteenth: Admits that Grinnell owns approximately 75% of the common stock in ADT, and all or a majority of the common stock in Holmes and AFA, and that certain members of the Board of Directors of Grinnell constitute a majority of the members of the Board of Directors of ADT and are also members of the Boards of Directors of Holmes and AFA; refers to the admissions contained in Paragraphs Thirteenth through Fifteenth hereof; and except as so admitted denies that it has knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in Paragraph "16" of the complaint.

Seventeenth: Denies that it has knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in Paragraph "17" of the complaint.

Eighteenth: Admits, upon information and belief, that Grinnell has contracting offices in various parts of the United States; that Grinnell has paid commissions to certain of its employees for recommending to third parties certain types of ADT central station electric protection service when such recommendations have resulted in contracts between such third parties and subsidiaries of ADT for such service; admits that a subsidiary of AFA supplies [fol. 61] certain devices used in connection with the furnishing by subsidiaries of ADT of certain types of central station electric protection service in the cities of New York, Philadelphia and Boston and environs and receives a certain percentage of the revenues derived from said service; that Grinnell is now to a very limited extent selling for

cash to subsidiaries of ADT certain devices used in connection with the furnishing by such subsidiaries of ADT of certain types of central station electric protection service; but alleges that by virtue of an agreement, in February, 1954, Grinnell sold to subsidiaries of ADT certain devices then used by them in providing protection service under certain agreements with subscribers and for the exact terms and provisions thereof this defendant refers to the original or true copies thereof to be produced upon the trial of this action; and except as so admitted denies that it has knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in Paragraph "18" of the complaint.

Nineteenth: Admits that since 1925 the capital stock or assets, or certain of the capital stock or assets, of 22 corporations or firms, each of which provided services, systems, devices or other means designed to protect against or to minimize losses arising out of fire, burglary or other hazards, were acquired by ADT or its subsidiary corporations; and except as so admitted denies each and every allegation contained in Paragraph "19" of the complaint.

Twentieth: Admits that since about the year 1906 the defendants or their predecessor corporations have entered into certain agreements and for the exact terms and pro- [fol. 62] visions thereof this defendant refers to the original or true copies to be produced upon the trial of this action; and except as so admitted denies each and every allegation contained in Paragraph "20" of the complaint.

Twenty-First: Admits that certain protection devices used in the provision of central station electric protection service are manufactured and assembled by ADT and one of its subsidiaries, by Grinnell to a very limited extent, and by a subsidiary of a subsidiary of AFA, and are shipped to various subsidiaries of ADT and AFA; that protection devices, as that term is defined in Paragraph "8" of the complaint, and materials produced by these corporations and other manufacturers in various states are sold and shipped across state lines to subsidiaries of ADT and AFA and to other enterprises engaged in the provision of central station electric protection service; denies that ADT manufactures or assembles such devices in the State of

New York or Missouri; and except as so admitted or denied, denies that it has knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in Paragraph "21" of the complaint.

Twenty-Second: Admits that in Washington, D.C., Kansas City, Missouri, St. Louis, Missouri, and in certain other cities throughout the United States central stations operated by subsidiary corporations of ADT provide central station electric protection service, by use of leased telephone wires, to some subscribers located within the operating radius of said central stations who, in some instances, are located in different states from that in which said [fol. 63] central station is located; and except as so admitted denies that it has knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in Paragraph "22" of the complaint.

Twenty-Third: Admits that certain operations of various subsidiaries of ADT and their sales offices and central stations, located in various states, are in part supervised by officers and other representatives in other states; that certain reports, contract forms, price-lists, instructions, payments and other communications pass between them; that from time to time certain officers and representatives travel to and from such subsidiaries, sales offices and central stations; and, except as so admitted, denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in Paragraph "24" of the complaint.

Twenty-Fourth: Except as elsewhere admitted in this answer, denies each and every allegation contained in Paragraph "24" of the complaint.

Twenty-Fifth: Denies each and every allegation contained in Paragraph "25," Paragraph "26," subdivisions "(a)" to "(d)" inclusive, Paragraph "27" subdivisions "(a)" to "(c)" inclusive, and Paragraph "28" subdivisions "(a)" to "(d)" inclusive of the complaint.

For a First Affirmative Defense

Twenty-Sixth: Alleges that prior to 1906 and thereafter the furnishing of central station electric protection service, [fol. 64] the furnishing or supply of services, systems, devices, and other means designed to protect against or to

minimize losses arising out of fire, burglary or other hazards, and any and all agreements among or between defendants with respect thereto, were and are local and intrastate in character.

For a Second Affirmative Defense

Twenty-Seventh: Alleges that in 1953 any and all agreements among or between ADT and other defendants of the nature alleged in the complaint, other than agreements executed in and after 1952 providing merely for the sale of devices, or for the furnishing of devices or central station electric protection service and the disposition of revenues therefrom, had been cancelled or were shortly to expire and any issues arising therefrom became and are now moot.

For a Third Affirmative Defense

Twenty-Eighth: Alleges that prior to 1953 Grinnell had acquired no stock interest in ADT, and that in 1953 Grinnell, to the knowledge of the Antitrust Division of the Department of Justice, withheld its acquisition from Western Union Telegraph Company of 62% of the stock of ADT pending an investigation of said proposed acquisition by the Department; that Grinnell and ADT submitted all information requested by the Department with respect to said proposed acquisition, offered to submit any further information desired, disclosed the nature and scope of the operations of Grinnell, ADT, Holmes and AFA and their subsidiary corporations, as well as the stock interests of [fol. 65] Grinnell in and its control of Holmes and AFA, and that Grinnell consummated said proposed acquisition and acquired control of ADT only after the investigation was concluded without objection by the Department, and in reliance upon the representation of the Department to that effect.

Twenty-Ninth: Alleges that in 1955 ADT withheld its acquisition of the assets of General Alarm Company of Boston, a company engaged in the furnishing of central station electric protection service in said City and environs, pending the submission to the Antitrust Division of the Department of Justice for its clearance and approval of said proposed acquisition, submitted all information re-

quested by the Department with respect to said proposed acquisition, offered to furnish any further information desired, again disclosed the nature and scope of the operations of Grinnell, ADT, Holmes and AFA and their subsidiary corporations, as well as the stock interests of Grinnell in and its control of ADT, Holmes, and AFA, including the stock interests acquired by Grinnell in 1953 and thereafter, and consummated said proposed acquisition only after and in reliance upon the representations by the Department that it intended to take no action with respect to said proposed acquisition.

Thirtieth: That by reason of the foregoing plaintiff may not be heard, in equity and good conscience, to pray for the divestiture demanded in the complaint herein.

Prayer

Wherefore, defendant American District Telegraph Com-
[fol. 66] pany prays that the relief demanded in the complaint be denied and that the complaint herein be dismissed as against it.

Dated: July 3, 1961.

/s/ Matthew W. Goring, Attorney for Defendant, American District Telegraph Company, Industrial Bank Building, Providence 3, Rhode Island.

Of Counsel: Bleakley, Platt, Hart & Fritz, 120 Broadway, New York 5, New York.

[fol. 67] Certificate of service [omitted in printing] July 3, 1961.

[fols. 68-69] [File endorsement omitted.]

[fol. 70] IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

Civil Action No. 2785

[Title omitted]

MOTION FOR PRODUCTION OF DOCUMENTS—Filed July 13, 1961

Plaintiff United States of America, pursuant to Rule 34 of the Federal Rules of Civil Procedure, moves the Court for an order requiring the defendant Grinnell Corporation and all subsidiaries (hereinafter referred to as "Grinnell") to produce, at a date mutually agreeable to counsel for the parties, or as shall be fixed by the Court, the particular documents in the possession, custody or control of the defendant as hereinafter described and to permit the plaintiff to inspect and copy or cause to be copied said documents by photostat or other appropriate means.

Each of the documents described herein contains material relevant to the subject matter of this action or contains material which may aid the plaintiff in the preparation and presentation of its case, as is more fully shown in the affidavit attached hereto.

American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware will be referred to as "ADT", "Holmes" and "AFA", respectively.

* * * * * * *

[fol. 71] 6. Copies of all correspondence, reports, memoranda and other documents prepared, sent or received by Grinnell relating in any way to the following agreements from the date of execution of the agreement to date:

(a) Agreement dated April 29, 1907, between General Fire Extinguisher Company, Automatic Fire Protection Company and American District Telegraph Company;

(b) Agreement dated April 29, 1907, between General Fire Extinguisher Company, American District

Telegraph Company, Automatic Fire Protection Company, Automatic Fire Alarm Company, Boston Automatic Fire Alarm Company and Consolidated Fire Alarm Company;

(c) Agreement dated March 29, 1954, between Grinnell, American District Telegraph Company and the Rhode Island Electric Protective Company.

[fol. 72] 7. Copies of all agreements other than those listed in Item 6 between Grinnell and any company engaged or which has engaged in the central station protection business from January 1, 1903, to date.

8. Copies of all correspondence, reports, memoranda and other documents prepared, sent or received by Grinnell relating in any way to the agreements listed in Item 7 from the date of the execution of such agreement to date.

* * * * * * *

/s/ Noel E. Story, /s/ Robert G. Levy, Attorneys, Department of Justice.

[fols. 73-74] [File endorsement omitted.]

[fol. 75] IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

Civil Action No. 2785

[Title omitted]

STIPULATION—Dated September 28 & 29, 1961

It Is Hereby Stipulated and Agreed, by and between the parties hereto, by their respective attorneys, with respect to the Interrogatories Propounded by Plaintiff and the Motion to Produce Documents, both of which were served by Plaintiff on defendant Grinnell Corporation (hereinafter

termed "Grinnell") by mailing copies thereof to said defendant on July 11, 1961, as follows:

1. The Interrogatories shall be deemed to request information solely with respect to the operations of Grinnell in the United States.

* * * * * * *

[fol. 76] 3. Paragraphs 6 and 8 of the Motion for the Production of Documents shall be deemed to refer only to copies of all documents of the nature described therein which were prepared, sent or received by Grinnell during the period from ten years prior to the filing of the complaint in this action, i.e., April 14, 1961, to and including the date of this stipulation.

* * * * * * *

[fol. 77] 5. As used herein "Grinnell" refers to Grinnell Corporation and all of its subsidiaries except the other defendants herein, to wit, American District Telegraph Company, Holmes Electric Protective Company, and Automatic Fire Alarm Company of Delaware, and their respective subsidiaries, herein respectively referred to (including their respective subsidiaries) as "ADT", "Holmes" and "AFA".

* * * * * * *

Dated: September 29, 1961

Noel E. Story, Robert G. Levy, Attorneys, Department of Justice. By: Noel E. Story, Robert G. Levy, Attorneys for plaintiff United States of America. Roger T. Clapp, Esq., Secretary and Counsel, Grinnell Corporation, Providence 1, Rhode Island. Cahill, Gordon, Reindel & Ohl, 80 Pine Street, New York 5, New York.

Dated: September 28, 1961

By: Jerrold G. Van Cise, Attorneys for defendant Grinnell Corporation.

[fol. 78] [File endorsement omitted.]

[fols. 79-80] IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

Civil Action No. 2785

[Title omitted]

PLAINTIFF'S ANSWER TO INTERROGATORIES PROPOUNDED BY THE DEFENDANTS—Filed October 16, 1961

* * * * * * *

[fol. 81] Interrogatory No. 5

5. State fully the manner in which Grinnell is claimed to have directly engaged in furnishing central station electric protection service.

Answer to Interrogatory No. 5

5. Plaintiff contends that Grinnell entered into contractual agreements with other defendants and co-conspirators on April 29, 1907, and March 29, 1954, to engage in furnishing central station electric protection service throughout the United States. Under these agreements Grinnell contracted to supply and install actuating devices for central station sprinkler system supervisory and waterflow alarm service; other defendants and co-conspirators supplied and installed certain devices and rendered central station electric protection service; and Grinnell received 25% of the revenue derived from subscribers to central station electric protection service.

* * * * * * *

[fol. 82] Interrogatory No. 8

8. State fully the manner in which Grinnell is claimed to have engaged in furnishing central station electric protection service through subsidiaries.

[fol. 83] Answer to Interrogatory No. 8

8. The Grinnell Corporation is claimed to have engaged in furnishing central station electric protection service through subsidiaries by exerting control over them by majority representation on their Boards of Directors.

* * * * * * *

[fol. 84] Interrogatory No. 15

15. State as to each subsidiary of ADT which is claimed to be engaged in the manufacture of protection devices:

(a) Name
(b) Address
(c) Type of protective devices for each year from 1950 to date
(d) Quantities of each type thereof for each year from 1950 to date.

Answer to Interrogatory No. 15

15. The subsidiaries of ADT which are claimed to be engaged in the manufacture of protective devices are as follows:

(a) ADT Company, Inc. (N.Y.)
155 Sixth Ave., New York 13, N.Y.
(b) American District Telegraph Co. (Missouri)
309 Johnson Street, St. Louis 3, Missouri

(c) ADT Company, Inc. (N.Y.) manufactures, assembles and purchases electrical signaling and actuating devices, apparatus and equipment. The American District Telegraph Company (Missouri) manufactures burglar alarm screens which consist of fine copper wires embedded in selected wood dowels and supporting frame members and secured by special compound. Also manufactured are safe cabinets consisting of a system of electrical conductors of foil and contacts applied to cabinets constructed of wood for enclosing a safe. Plaintiff does not have sufficient information to specify the type of protective devices manufactured by the above-named subsidiaries for each year from 1950 to date other than those devices mentioned above. [fol. 85] (d) Plaintiff does not have sufficient information to form an answer to this interrogatory.

* * * * * * *

[fol. 86] Interrogatory No. 18

18. Identify each and every person, firm or corporation referred to in paragraph "7" of the complaint as "co-conspirators" by:

(a) Name
(b) Address

Answer to Interrogatory No. 18

18. In addition to those co-conspirators specifically described in paragraph 7 of the complaint, the following corporations and individuals are also referred to as co-conspirators:

(a) (1) Western Union Telegraph Company
(2) American Telephone and Telegraph Co.
(3) New York Telephone Company
[fol. 87] (4) Ludlow Automatic Fire Alarm Company
(5) Robert L. McElroy
(6) Automatic Fire Protection Company
(7) Fire Protection Development Company
(8) Aero Fire Alarm Company
(9) Rhode Island Electric Protective Company

(b) (1) 60 Hudson Street, New York 13, New York
(2) 195 Broadway, New York, New York
(3) 140 West Street, New York 7, New York
(4) Unknown
(5) Unknown
(6) Unknown
(7) Unknown
(8) Unknown
(9) 111 Mathewson St., Providence 3, Rhode Island.

• • • • • • •

Interrogatory No. 53

53. State whether it is a usual and ordinary practice of persons, firms or corporations engaged in furnishing central station electric protection service to retain title to the devices installed by them and located upon their subcriber's premises.

• • • • • • •

[fol. 89] Answer to Interrogatory No. 53

53. It is a usual and ordinary practice of persons, firms or corporations engaged in furnishing central station electric protection service to retain title to the devices installed by them and located upon their subscriber's premises.

* * * * * * *

[fols. 90-91] Interrogatory No. 80

80. With reference to the allegations of paragraph "21" of the complaint, state for each year from 1950 to date, as to each of the defendants:

(a) The quantity of protection devices so shipped
(b) The types thereof
(c) The dollar volume thereof

Answer to Interrogatory No. 80

80. Plaintiff does not have sufficient information to form an answer to this interrogatory except that plaintiff is informed that defendant ADT shipped $4,431,000 worth of protection devices in the year 1958; that defendant Holmes received or shipped $345,117 worth of protection devices in the year 1958; and that defendant AFA received or shipped $385,000 worth of protection devices in the year 1958.

* * * * * * *

[fol. 92] Interrogatory No. 82

82. State, as to the protection devices allegedly furnished by Grinnell to ADT annually from 1950 to date

* * * * * * *

(c) The type thereof.

* * * * * * *

[fol. 93] Answer to Interrogatory No. 82

* * * * * * *

(c) Sprinkler Supervisory and Waterflow Alarm actuating devices.

* * * * * * *

[fol. 93a] [File endorsement omitted].

[fol. 94] IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

Civil Action No. 2785

[Title omitted]

MEMORANDUM IN SUPPORT OF PLAINTIFF'S OBJECTIONS TO CERTAIN INTERROGATORIES PROPOUNDED BY DEFENDANTS AMERICAN DISTRICT TELEGRAPH COMPANY, AUTOMATIC FIRE ALARM COMPANY OF DELAWARE AND HOLMES ELECTRIC PROTECTIVE COMPANY—Filed October 16, 1961.

[File endorsement omitted.]

* * * * * * *

[fol. 95] Interrogatories 134 Through 160 Improperly Request Information Which is Immaterial and Irrelevant

* * * * * * *

By the interrogatories here in question, defendants ADT, AFA and Holmes request certain information relating to the investigation by the Department of Justice of Grinnell's acquisition of ADT in 1953 and clearance of ADT's [fol. 96] acquisition of the General Alarm Company of Boston in 1955.* Plaintiff objects to each of these interrogatories on the basis that the information sought is not relevant to the subject matter of this action.

* * * * * * *

[fol. 97] There are a host of reasons why the information sought by these interrogatories is not relevant to

the subject matter of this suit. First, most of the evidence plaintiff intends to introduce at trial to establish violations of Sections 1 and 2 of the Sherman Act relates to the post 1955 period.

* * * * * * *

[fol. 97a] /s/ Noel E. Story. /s/ Robert G. Levy, Attorneys, Department of Justice.

[fol. 98] IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

Civil Action No. 2785

UNITED STATES OF AMERICA, Plaintiff,

v.

GRINNELL CORPORATION, AMERICAN DISTRICT TELEGRAPH COMPANY, HOLMES ELECTRIC PROTECTIVE COMPANY, AND AUTOMATIC FIRE ALARM COMPANY OF DELAWARE, Defendants

MEMORANDUM—January 23, 1962

Sweeney, Ch. J. In this civil antitrust action brought by the United States against Grinnell Corporation, American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware, argument has been heard upon the following, which have been extensively briefed:

I. the government's motion for the production of documents,

II. the defendants' objections to the government's interrogatories,

III. the government's objections to the defendants' interrogatories, and

IV. the defendants' motions for further answers to interrogatories.

I. Government's Motion for the Production of Documents

The government has in some instances in the past convened grand juries in antitrust actions for the apparent sole purpose of obtaining documents from defendants' files for use in civil suits. In this case the government has avoided this cumbersome, expensive and questionable procedure and is relying on the liberal discovery provisions of the Federal Rules of Civil Procedure.

Rule 34 of those Rules provides that upon a showing of good cause the Court may order any party to produce and [fol. 99] permit the inspection of designated documents, papers, et cetera, which constitute or contain evidence relating to the matters within the scope of the examination permitted by Rule 26(b). The latter Rule provides for the examination of any matter, not privileged, which is relevant to the subject matter involved in a pending action. This is a broad Rule and includes a provision that "it is not ground for objection" to the inspection that the testimony would be inadmissible at the trial if the testimony sought appears reasonably calculated to lead to the discovery of admissible evidence. The defendants object that under the provision of Rule 34 the plaintiff has not shown good cause and have filed affidavits in support of this contention. Accompanying the motion of the plaintiff is an affidavit of counsel for the plaintiff which satisfies the "good cause" requirement. "Good cause" is a matter that is hard to define and is addressed to the discretion of the Court. The plaintiff is not in a position to designate with great particularity documents that it wants because it does not as yet know what the documents contain or how relevant they may be to its case. The designation of the documents by categories has received the approval of the Courts. See *United States* v. *U. S. Alkali Exporting Association,* 7 F.R.D. 256 (S.D. N.Y. 1946) and *United States* v. *United Shoe Machinery Corporation,* 76 F. Supp. 315 (D.C. Mass. 1948).

Another ground for objection by the defendants is that the government seeks to go back too far in point of time in the inspection of documents. There is a demand for an agreement executed in 1907 between some of the defendants and competitors; and while a search into such a remote

period would not ordinarily be justified, the government does allege that the 1907 and subsequent agreements were still in operation as late as 1955. The agreement is covered by item 19, et seq., of the demand for the production of documents addressed to A.D.T. Since this and subsequent agreements named in the motion for the production of documents may be the basis for the alleged violation of the anti-trust laws, the motion as to all agreements entered into [fol. 100] between the defendants, either amongst themselves or with competitors, since 1907 is allowed. This allowance, however, is only to the production of the agreements themselves and amendments thereto. Other objections to the plaintiff's demands are addressed to inter-company correspondence, papers and records which the defendants allege go back too far in point of time to be the subject for a demand for production and that some of the other demands cover relations with corporations in foreign countries and not named in the bill of complaint. The Court adopts the following rule of this case which is to govern its trial henceforth: Production of all documents that pertain to relations between these defendants, either amongst themselves or with competitors, is to be limited territorially to the United States and Canada. Discovery is to be limited to a period of ten years prior to the filing of this action, which would start the period for which the defendants are liable to produce on April 13, 1951.

Further objection to another review of records furnished to the government by some of these defendants in 1953 and 1955 is overruled. This will be discussed later in conjunction with the defendants' motions for further answers to interrogatories 134-160.

The defendants also object to re-examination of documents which they allege were furnished to the Federal Bureau of Investigation in 1957 to the extent of some 4200 contracts and which documents they allege that the government now has. Of course, there is no reason for a re-production of the same instruments; and in complying with this order where the defendants know that the government is already in possession of such material or data on a subject, whether it be in the form of bulletins or pamphlets, or otherwise, it will be sufficient compliance to so state.

I am satisfied that the plaintiff has shown good cause for

the production by the defendants of the documents enumerated in its motion. The motion is, therefore, allowed within the time and territorial limitations prescribed. The defend-
[fol. 101] ant Grinnell has submitted a memorandum in opposition to the government's motion for production which has been noted, but it does not persuade the Court that the motion for production as to the other defendants should not be granted.

II. Defendants' Objections to Governments Interrogatories

The interrogatories filed by the plaintiff in this case have been extremely burdensome to the Court because identical questions to each of the defendants have not maintained the same numerical sequence. Henceforth, it is ordered that when interrogatories are filed against several defendants those questions which are common to each defendant are to be listed first amongst the interrogatories and designated as "common questions"; thereafter, such interrogatories as are not common to all the defendants interrogated may be added and designated as "individual interrogatories applying only to the named defendant."

American District Telegraph Company

Subject to the geographical and time limitations set forth above, the following disposition is made of the objections of A.D.T.:

The objection to the government's request preceding question No. 1 is sustained.

The following objections are sustained: 7, 10, 12, 15, 17, 23, 25, 26, 32, 40 and 48.

The following objections are overruled: 1, 4, 5, 6, 8, 9, 11, 20, 22, 36, 37, 38, 39, 41, 42, 43, 44, 46 and 47.

Holmes Electric Protective Company

Subject to the geographical and time limitations set forth above, the following disposition is made of the objections of Holmes Electric Protective Company:

The objection to the government's request preceding question No. 1 is sustained.

The following objections are sustained: 7, 8, 14, 16, 17, 19, 23 and 25.

The following objections are overruled: 5, 9, 10, 15, [fol. 102] 24, 26 and 29.

Automatic Fire Alarm Company of Delaware

Subject to the geographical and time limitations set forth above, the following disposition is made of the objections of Automatic Fire Alarm Company of Delaware:

The objection to the government's request preceding question No. 1 is sustained.

The following objections are sustained: 7, 9, 11, 15, 18, 20, 21, 30 and 32.

The following objections are overruled: 5, 8, 10, 28, 29, 31, 35 and 36.

III. and IV. A. Government's Objections to Defendants' Interrogatories

B. Defendants' Motions for Further Answers

I feel that a word of caution is needed to counsel on both sides to adhere to the spirit and intent of the rules on interrogatories, both in propounding and in answering them. The purpose of interrogatories, of course, is to seek out legitimate information that would be necessary to the case of the party propounding the interrogatories and which would directly or indirectly lead to evidence in support of its case. They should never be used to harass or vex opposing counsel or the opposing party. I think that I have sensed in this case an antagonism between the counsel that is above the feeling existing understandably between counsel in the average case. This Court does not intend to be caught in any cross fire wherein the parties extend their inquiries to an unnecessary point or wherein the answers furnished or the reason for not furnishing them may be evasive or stretched to a point that is unreasonable. This is particularly applicable to those answers in which the government claims "informer privilege" or "executive privilege." The Court must rely upon the integrity of counsel when they assert such claims, and it is not now in a position to adjudicate the validity of such claims. Where

the Court sustains the government's claim of informer or executive privilege, no order of preclusion will be en- [fol. 103] tered at this time. However, if it develops at the trial of this case that the claim of the government was ill-founded, the matter will be dealt with anew.

The objections and motions can be dealt with together and in categories.

1. Objections of the government on ground that it has insufficient information to form an answer.

To certain interrogatories [1] the government has replied to the effect that it has "insufficient information to form an answer." This is a very vague statement and is not a proper objection to the inquiry. The government either knows the answer or doesn't. If it does not know after a reasonably diligent search, it should so state. See Ford, J. in *Banana Service Co.* v. *United Fruit Co.*, 15 F.R.D. 106, 109 (D.C. Mass. 1953).

The motion for further answers is allowed as to this category.

2. Objections of the government based upon "details of trial evidence."

The defendants have filed certain interrogatories [2] to which the government has objected on the ground that they call for a production of the government's trial evidence. Many of these questions are in three parts. The first part calls for an answer which, generally, the government has given; the second part calls for details of all its evidence in case the first part of the question is in the affirmative; and the third part calls for details of all its evidence in case the first part

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[1] Interrogatories 12, 15(d), 26(b), 27, 34(c), 35, 36, 37(c), 42(b) (c), 43, 46, 47, 48(f) (g), 53(c), 55, 56, 57, 63, 66, 67, 68, 70, 71, 72, 73, 76, 78, 79, 81(a-d) (f-h), 82(a) (b), 91(f) (g), 102, 103, 110, 117, 118, 119, 132 and 133.

[2] Interrogatories 19, 20, 21, 86, 87, 89, 90, 91, 92, 93, 94, 96, 98, 99, 105, 106, 107, 111, 112, 113, 114, 120, 121, 122, 123, 124, 125, 127, 128, 129 and 130.

of the question is in the negative. The objections of the government are sustained. The questions asked are so broad and comprehensive as to call for every minute detail of the government's evidence. Such answers as the government has given are in keeping with the rules governing interrogatories and the rights of discovery. To further extend them to the point demanded by the defendants would simply place all the government's trial evidence in the defendants' hands to the most minute particle. The rule with regards to discovery of this nature is well stated in *Aktiebolaget Vargos* v. *Clark*, 8 F.R.D. 635, 636 (D.C. D.C. 1949), in which Judge Holtzoff sustained an objection to the enumeration of items of evidence that were called for in support of a specific inquiry. There is nothing in the Federal Rules of Civil Procedure that compels either party to present its case in advance of trial. *United States* v. *Continental Can Co.*, 22 F.R.D. 241, 247 (S.D. N.Y. 1958). The objection to this type of inquiry is sustained.

3. Informer privilege.

These objections are sustained, except as to those persons whom the government will use as witnesses in this proceeding, if the information sought would lead directly or indirectly to the identity of the informer. Interrogatory 29(b) (c) may be taken as an example. If the disclosure under (b) and (c) would not identify the informer or lead to its identification, the government must answer. If, however, the question alone or with others would enable the defendants, either directly or indirectly, to learn the identity of the informer, the objection is well taken.

The motions for further answers are denied subject to the above exceptions. As to those whom the gov- [fol. 105] ernment will call as witnesses, the objections are overruled and the motion for further answers is allowed. *United States* v. *First National Bank and Trust Co. of Lexington*, 4 F.R. Serv. 2d 33.333, Case 4 (E.D. Ky. 1961).

The order for preclusion, under Rule 37 of the Federal Rules of Civil Procedure, will not now be entered.

Again, the Court reserves the right, however, to reject any or all testimony offered at the trial in which it finds that the government has exceeded the proper limits in claiming "informer privilege."

4. Relevancy and executive privilege.

The defendants have set up an affirmative defense that the 1953 and 1955 acquisition-of-stock mergers were only consummated after the plaintiff had raised no objection to them and in reliance upon the representations by the Department of Justice that it intended to take no action with respect to the proposed plan of the defendants. While the defense raised by the defendants may not be legally effective to bar this action, nevertheless, the defendants are entitled to have all the evidence in the hands of the Department which bears upon this issue. The questions are relevant to the affirmative defense and should be answered. They are not within the category of executive privilege since the 1953 and 1955 dealings culminated in a disclosure of a decision, tentative though it may have been, on the question raised by the defendants.

The objections to interrogatories 134-160 are overruled, and the government is to answer over.

In connection with matters covered by these same interrogatories, a few words are appropriate with regards to the government's motion to produce for fur- [fol. 106] ther review certain documents submitted to the government during 1953 and 1955.

The defendant have pleaded as an affirmative defense to this action that when the government in 1953 investigated the acquisition by Grinnell of a contemplated purchase of 62% of the stock of A.D.T. and when in 1955 the government again reviewed the contemplated acquisition of assets of General Alarm Company of Delaware by A.D.T. these two transactions were concluded without opposition by the Department and in reliance upon representation of the Department that it intended to take no action with reference to those transactions. An affidavit has been filed by the then and present counsel for the defendants in support of their objections to the government's demand for docu-

ments, urging that the government is not entitled to review again the action of the defendants. It is clear that at that time the government did not "presently intend to take action to the proposed acquisition" but it is also clear from the government's letter that it reserved all rights to take further action if other evidence or subsequent developments should warrant it. It becomes apparent from the government's bill of complaint that it is now acting under that reservation of rights. This entitles the government to completely review the affairs of these defendants in aid of a charge of unlawful conspiracy amongst the defendants to restrain and monopolize interstate trade and commerce. The objection of the defendants on these grounds is, therefore, overruled. Clearance for acquisition of stock is not equivalent to a promise of immunity from suit for an alleged violation of the antitrust laws. [fol. 107] Neither in fact and in law can it be so construed. Nor can a "present intention not to take action" be equated with future immunity. It is not a final disposition.

Government's Objections to Defendants' Additional Interrogatories Filed on December 21, 1961

The objections to these eight interrogatories are sustained on the single ground that they are oppressive and unduly burdensome. All the interrogatories are predicated on the first one which seeks information about each agency of the Government of the United States without defining what they mean by it. I presume that in its broadest scope "agency" would include any private concern which collects taxes and remits them to the federal government or sells postage stamps or otherwise acts as an agent of the government. If the person who drew up these interrogatories realized the scope of the questions being asked, then it would seem that a charge of harassment could be well lodged. The period of research necessary in this case would delay the trial for many years.

The other objections to the interrogatories are not considered.

In the above, the Court has attempted to rule on all motions and objections filed through December 21, 1961. Coun-

sel should immediately call any omissions to the Court's attention.

In filing objections to interrogatories and other papers the defendants have placed the "Notice of Hearing" on the top sheets so that it becomes necessary for the Court to look for the second sheet before it can decide which defendant it refers to. The defendants will adopt the practice of placing the notice of hearing on the last sheet of the group or clearly designating on the top sheet which defendant the papers refer to.

[fol. 108] IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

United States District Court
Boston 9, Massachusetts

Chambers of George C. Sweeney, Chief Judge.

cc: The Honorable Raymond J. Pettine
United States Attorney
District of Rhode Island
Providence 1, Rhode Island

LL:BGR
60-339-1

March 6, 1962

Noel E. Story, Esquire
Attorney, United States Department of Justice
Washington, D. C.

Dear Mr. Story:

Re: United States of America v. Grinnell Corporation, et al Civil Action No. 2785, U.S.D.C. R.I.

For reasons stated to you yesterday, I have withdrawn from the above-entitled case and have communicated this to Chief Judge Woodbury. I have also told him of the Government's desire to have a speedy hearing on the two motions now pending.

As Chief Judge Woodbury is on his way to Washington,

there probably will not be a designation of another judge to hear this case until after the time now set for the hearing of the motions, which is March 12, 1962.

You may consider that that assignment of hearing for March 12 is cancelled, and a new application for a hearing of those, and any other pending motions may be made after designation of a new judge.

Sincerely yours, George C. Sweeney, Chief Judge.

GCS:cms

[fol. 109] In United States District Court

Revocation of Designation of District Judge for Service in Another District Within His Circuit—March 12, 1962

Whereas the public interest so requires; now therefore pursuant to the provisions of Paragraph 3 § 295 of Title 28, United States Code, I hereby revoke my designation and assignment dated April 25, 1961, of the Honorable George C. Sweeney, Chief Judge of the United States District Court for the District of Massachusetts, to sit in the United States District Court for the District of Rhode Islond, to hear, consider and decide *United States of America* v. *Grinnell Corporation, American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware,* Civil Action No. 2785

Peter Woodbury, Chief Judge, First Circuit.

March 12, 1962

[fol. 110] IN UNITED STATES DISTRICT COURT

DESIGNATION OF DISTRICT JUDGE FOR SERVICE IN ANOTHER DISTRICT WITHIN HIS CIRCUIT—March 12, 1962

Whereas the public interest requires the designation and assignment of a district judge from another district to sit temporarily in the United States District Court for the District of Rhode Island to hear a case in which the judge of that court has disqualified himself: Now, therefore, pursuant to the provisions of Section 292(b) of Title 28, United States Code, I hereby designate and assign the Honorable Charles E. Wyzanski, Jr., United States District Judge for the District of Massachusetts, to sit in the United States District Court for the District of Rhode Island, to hear, consider and decide *United States of America* v. *Grinnell Corporation, American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware,* Civil Action No. 2785.

Peter Woodbury, Chief Judge, First Circuit.

Dated March 12, 1962

[fols. 110a-111] [File endorsement omitted.]

[fol. 112] IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

R. I. Civil Action No. 2785

UNITED STATES OF AMERICA, Plaintiff,

v.

GRINNELL CORPORATION, AMERICAN DISTRICT TELEGRAPH COMPANY, HOLMES ELECTRIC PROTECTIVE COMPANY, AND AUTOMATIC FIRE ALARM COMPANY OF DELAWARE, Defendants

Transcript of hearing on motion to settle form of order for production of documents—Boston, Tuesday, April 3, 1962

Before: Wyzanski, D. J.

* * * * * * *

[fol. 113] The Court. I have made up my mind what I am [fol. 114] going to do in this case, and I am going to do it promptly as I intend to do everything in this case.

I want to make it clear from the beginning that I am going to do nothing which will encourage the presentation of an undigested or unnecessarily voluminous mass of material to this Court.

The most difficult of antitrust cases could usually be tried on 500 documents if the Government were held to an appropriate presentation,—as each party will be held to an appropriate presentation in this case.

And I want it quite clear that I am at no stage going to tolerate the large swelling of the record as I have seen in this court and elsewhere previously.

If the defendants are guilty as charged of violation of the antitrust act so that a civil remedy is appropriate, there can be little doubt that the substantive offences, apart from some problems of market, can be shown in very short compass.

What the Government ought to be encouraged to do is to make a full examination. a careful selection, at minimum cost in copying and at minimum cost in presentation. And

[fol. 115] that will be my intention by every power that this Court possesses—which means that there is considerable power.

* * * * * * *

[fol. 116] The Court. What do the defendants, Mr. Fritz, say is a possible market, a large all-embracing market?

Mr. Fritz. Our view is that not only the possible market but the probable and correct market involves all types of protective service that protect either property or persons against hazards of burglary or fire or any of the other hazards that central station protects against, and that would include watchmen, auxiliary fire service, direct con-
[fols. 117-119] nected service, proprietary service, and local alarm service. I may have missed one.

The Court. You didn't miss many.

Mr. Story. Does that include the watchdog?

Mr. Fritz. Mr. Story asked if I included watch dogs and there are several persons who said they do use them for protective purposes, but I purposely omitted those.

The Court. Are you anxious to make me take the view that only an exhaustive discovery is possible because each side is so extreme, or are you both of the view that it would be desirable to work out some basis for inquiry as to the number of mechanical alarm or protective devices of different kinds, the number of companies, the volume in dollars, the number of transactions or something of that sort?

I don't know anything about what would be appropriate inquiries, but I can imagine that if you start to ask about the number of watchmen and watchdogs, we will be a long time.

* * * * * * *

[fol. 120] The Court. Now let me ask you this. From your point of view, what would happen if I should now set for separate trial the issues with respect to the offences, and absolutely decline to allow any testimony to be taken as to the market until I found out whether there were, even on the Government's hypothesis, as to the market, [fol. 121] adequate grounds for recovery by the Government—relief on behalf of the Government?

Mr. Story. In other words, what your Honor says is, "Leave the relevant market out of the hearing."

The Court. Not out of the hearing but leave it until later.

Mr. Story. Yes, sir, I understand that, and try the case, the issues, on mere facts as we have charged them in our complaint.

The Court. Yes.

Mr. Story. At what time, your Honor—when we finish?

The Court. I am not trying to say when but before I hear anything about the relevant market.

I merely assume, without deciding that the Government is correct, that there is a market of the kind described in the complaint and without in any way prejudging that issue but merely assuming it hypothetically, I will allow you then to offer your testimony with respect to the alleged offenses.

Mr. Story. That would suit the Government all right, your Honor.

* * * * * * *

[fol. 122] [File Endorsement Omitted]

[fol. 123] IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

No. 2785 Civil Action in District of Rhode Island

UNITED STATES OF AMERICA, Plaintiff,

v.

GRINNELL CORPORATION, AMERICAN DISTRICT TELEGRAPH COMPANY, HOLMES ELECTRIC PROTECTIVE COMPANY, AND AUTOMATIC FIRE ALARM COMPANY OF DELAWARE, Defendants

Transcript of hearing on plaintiff's motion in regard to the suspension of depositions, etc.—Boston, Thursday, January 10, 1963

* * * * * * *

[fol. 124] The Court. Now on the record, please. I suggest that at an early date the Government furnish to defendants a specific, detailed, page-by-page reference to [fol. 125] such portions of depositions already taken as the Government expects to introduce into evidence at the trial of this case.

Within thirty days after the Government has furnished that material, each defendant shall be under a corresponding obligation to indicate what objections it has to any parts of depositions referred to in the Government's list, and also to state with equal specificity such additional parts of those depositions as the defendant concerned intends to offer as necessary in its view for a complete presentation of the relevant depositions.

This does not mean that the defendants are under any obligation at this stage to refer to additional depositions which, if the defendant put on any case at all, they may choose to offer.

Mr. Fritz. I have one slight reservation, and I am not sure that I ought to mention it now. It may develop later.

I am not clear that the thirty days might be sufficient time. Perhaps we could let that rest for future determination. The Government says they are going to analyze

some 35 depositions. There are other depositions beyond [fol. 126] the 35 that we may wish to use, and I think we ought to go through the same process.

The Court. Well, I have protected you with respect to the other depositions because I said that you had no obligation with respect to them.

Mr. Fritz. That is correct, but for the 35 depositions, it is not clear to me that 30 days is sufficient.

The Court. You mean you can't analyze 35 depositions in 30 days? I am very sorry if you can't. I would say you are overcharging your clients for your time.

Mr. Story. Your Honor, when is the Government to have its portion of this work done? I didn't catch the date on that.

The Court. I didn't give a date.

Mr. Story. Very well.

The Court. I understood you were in such a hurry that you would do it promptly.

Mr. Story. I would like to finish my depositions first, your Honor, before we undertake this job.

* * * * * * *

[fol. 127] The Court. All right.

Now, Mr. Fritz, are you prepared to tell me anything about your program or the program of other counsel and yourself with respect to the taking of depositions?

Mr. Fritz. Well, fundamentally, my program depends pretty much upon what the plaintiff does in this case and what I eventually have to meet. So it is rather difficult for me at this time to formulate just precisely what I am going to do.

I could conceivably go out and do things that I ought not to do, not knowing precisely what the plaintiff intends to do in this case. But, as a general matter, I have in [fol. 128] mind—and I have told this to Mr. Story—that there is a large number of manufacturers of protective devices used both in the field of burglary and fire protection in this country which are merely competitive with my company's activities in the cities in which they operate, and I would like to select a member from that group as bearing upon what the relevant market here is and get information from them.

I have suggested to Mr. Story that we might possibly adopt some kind of a method that we previously discussed in that connection. That is one of the things.

The Court. Well, you had hopes that the United States Supreme Court will regard the market as broadly as your statement just now indicates?

Mr. Fritz. I think this Court and that Court will consider what the facts from those sources show as bearing upon that market, and it is my view that they have a very substantial bearing. I have been wrong, of course, many times. I am sure. I may be wrong in this, but I would like to have the evidence available for consideration by the Court at an appropriate time.

Then, in addition to that, if your Honor is finished with [fol. 129] that aspect——

The Court. Well, I think I might make a statement. Aren't you in a position where you would be able to make an offer of proof without very extensive depositions?

Mr. Fritz. Well, I would still have to have enough detailed information which I would hope to get through the cooperation of Mr. Story in order to have a basis for the making of such an offer, I think. It is very difficult to get information from these companies in situations like this. There are no central sources for the data—the volume.

The Court. That is not the only aspect in which the word "central" is absent.

I really want to protect your rights and your clients' rights, but extensive discovery in this area is in my view really unnecessary because recent decisions of the Supreme Court of the United States have made it transparent that markets may be defined in a rather narrow and specialized way.

Mr. Fritz. Yes, I think I am aware of what your Honor has in mind, but I think even in that concept what I have in mind with respect to the activities of manufacturers [fol. 130] comes so close to paralleling what we do in our areas of operation, that they really constitute substantial competition—in the same field.

Mr. Story. May I be heard a moment, your Honor? That is one of the reasons why, your Honor, I think a discussion here today is going to be most profitable for all concerned.

He mentions manufacturers of protection devices. I can't conceivably see how anything like this will be relevant to any of the issues here.

Another thing Mr. Fritz has neglected to state, and I made it clear that I thought we ought to be specific on how many of these companies, and this to me seems to be so clearly outside of the entire field. My case is a service case. Maybe Mr. Fritz could tell us some more about why he thinks this would be relevant. We are not claiming that they have monopolized protection devices or anything like that.

At one time he mentioned something about nineteen manufacturers scattered all over the United States, and before your Honor I think your Honor should have these people tell us today how this will fit into this case so that [fol. 131] the Government won't have to make trips to Omaha, Nebraska, Los Angeles, and all over the United States a second time.

The Court. I am going to say this: that I will expect that the Government would move to quash the taking of very many of these depositions if you tried to take them.

Mr. Story. All of them, sir, at this point?

The Court. Now, now. And I think that is a situation which might be avoided by some sort of stipulation. That is, I think that what you might be prepared to do, Mr. Fritz, is to list the companies or persons whose depositions you would like to take and for you to make some kind of offer of proof in which you indicate the general nature of the testimony you would elicit from such persons and its alleged relevance. Then I would be in a position to consider whether the Government would be right in its contention that even if such matters were proved, they would not be relevant.

Mr. Fritz. Of course, that is certainly agreeable to me. I had thought, however, that I had passed that situation in my thoughts with Mr. Story—that he and I on an informal basis would try to obtain the information that I [fol. 132] was seeking so as to obviate the necessity for depositions. However, I will be very glad to do as your Honor indicates.

The Court. Wouldn't that be the cleanest way from the point of view of the record?

Mr. Fritz. Yes.

The Court. Do you think so, too, Mr. Story? Would that be the cleanest way from the point of view of the record?

Mr. Story. I think so, your Honor. I think that is a good suggestion that your Honor has made. It could well save us a lot of travel. It is possible that we could stipulate as to what facts he might want to elicit from these companies. I don't know what he has in mind, but in a presentation such as your Honor has suggested, why it is possible that we would stipulate that the end companies, for instance, have all the protection devices that they need available to them. We would stipulate to that. I don't know exactly what Mr. Fritz has in mind from his discussion here, but it is possible that we wouldn't have to take any depositions and we could stipulate to it. But I think your Honor's suggestion is good.

* * * * * * *

[fol. 133] The Court. On what date was the complaint filed in this case?

Mr. Fritz. April 13, 1961.

The Court. On what date did discovery begin?

Mr. Fritz. I think about May 16th of—is your Honor talking about the production of documents?

The Court. Well, let's say the first deposition.

Mr. Fritz. We started to take depositions one month after the joinder of issue, and the joinder of issue was in [fol. 134] July of 1961. We started to take depositions the following month, August.

The Court. I am going to make a firm and binding rule that no depositions may be taken after the first of September, 1963. All depositions must be concluded by that date. By October 1, 1963, the Government shall furnish to the defendants such list of witnesses as Judge Sweeney directed should be furnished. The Government in extraordinary circumstances may at a later date add a witness to the list but the circumstances will have to be extraordinary.

Mr. Story. Very well, your Honor.

The Court. It is much too early for you to give me definite information as to how long the Government's case

is likely to take, but what is your best estimate, Mr. Story—that is, how many days of court room presentation?

Mr. Story. Your Honor, I wouldn't want to be held to this completely but it is my intention to produce very few live witnesses. I intend to produce depositions and produce documents. I wouldn't want to be held completely to this but I would think that we should be able to do it, if the [fol. 135] Court will assist us in authenticating documents and doing the necessary authenticating on documents beforehand that the Government can put its case in at a maximum of two weeks, and I am inclined to think that I can put it in in one week, five court days. But that all goes——

The Court. I don't know what you are talking about in connection with authenticating of documents. Can you tell me what other documents, other than those which come from the defendants' files, you are going to rely on?

Mr. Story. The others have been authenticated that I might use in connection with the depositions, your Honor. Those are the only ones: the documents coming from the defendants' files. If they will authenticate those under the standard stipulation that parties usually enter into, that the document was found in their files, that it is presumed that the person that the letter was addressed to received the letter—the usual things: Once we can get that the Government can introduce its documents very quickly.

Mr. Fritz. There isn't going to be any problem about that sort of thing.

[fol. 136] The Court. All right. When can you have a list of those documents?

Mr. Story. Your Honor——

The Court. I am not trying to say next week. Can you have them by the first of September?

Mr. Story. I can if I don't have to do any extensive traveling, your Honor. I will make certain that I do have a list or have any documents selected by the first of September provided that I don't have to be on the road and away from my office an extended period of time.

The Court. I don't wish to put too great a burden on you personally, Mr. Story. Have you other cases besides this which you are handling at the moment?

Mr. Story. No, your Honor, but I didn't want to bring this up.

The Court. How many assistants besides Mr. Levy have you on this case? Is he the only one working on this case?

Mr. Story. He didn't want me to mention it today but he is going to leave me the first of September, and then I am it. I have a promise of one other man, a young man who is going to come on the case with me. In other words, I was notified he was coming with me the day before—I have his name. [fol. 137] But on a case of this size, as your Honor knows, it is going to be two or three months before he can effectively help me on documents, and I am going to use him for trial. Next month, your Honor—did I say September? He is leaving in February. If I said September, I am incorrect on that. It is next month.

The Court. In view of what you just said I am not going to set a date that is absolutely binding on you with respect to that schedule of authenticated documents, but I hope that you will be able to prepare at least a partial list by September 1, 1963, and a complete list then or soon thereafter.

Mr. Story. I will do everything I can, your Honor, to do that.

The Court. Is it your impression—and I am only asking you your impression—that the Government would be ready to offer its case, shall I say, in November of 1963?

Mr. Story. If I had Mr. Levy to continue with me, your Honor, that would be perfectly all right with me, but, not knowing the type of individual I am going to get and the fact it is going to take some time before he is going to be [fol. 138] really in a position to effectively help me, I at this point would not like to have that date set. I would hope that we could have a date like that, and as soon as I see how much help—I have only been told that I could have one other man on this case. If I can get more I will be very happy to notify your Honor just as soon as possible if I can make that date. It would certainly be my desire to do that.

* * * * * * *

[fol. 139] The Court. All right.

Gentlemen, when the record in this matter is typed out, I think it will be evident as to what I have ruled. If there is any doubt I will be prepared to put in the form of a final order—tentative order—what I said.

* * * * * * *

[fol. 140] IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

Civil Action 2785

[Title omitted]

ORDER—January 10, 1963

Wyzanski, D. J.

* * * * * * *

[fol. 141] 4. No depositions by any party shall be begun or continued after September 1, 1963.

5. By October 1, 1963 the Government shall furnish to defendants a list of its expected witnesses. Only in exceptional situations may a witness whose name is not on the list be called as a witness in chief by the Government.

——, ——, United States District Court.

[fol. 141a] [File endorsement omitted.]

[fol. 142] IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES COURT
Boston 9

Chambers of Charles E. Wyzanski, Jr. District Judge

January 23, 1963.

Matthew W. Goring, Esq.
Hinckley, Allen, Salisbury & Parsons
Industrial Bank Building
Providence 3, Rhode Island

United States v. Grinnell et al CA 2785

Dear Mr. Goring:

I have your letter of January 22 with respect to Mr. Story's proposed order enclosed in his letter to me dated January 17, 1963. Before I had your letter, I had already signed the order which, at the time I received it and even now, seems to me to have been appropriate. I am persuaded that in view of the limited relevance of the information to be procured from the General Services Administration, there is no reason to revoke or suspend the order which I have entered.

Sincerely, Frank A. Fritz, Esq., 120 Broadway, New York 5, New York. Lee Loevinger, Esq., Assistant Attorney General, Antitrust Division, Department of Justice, Washington, D.C., Attn: Noel E. Story, Esq. Hon. Neale D. Murphy, Clerk, United States District Court, Providence, Rhode Island.

Raymond J. Pettine, Esq., United States Attorney, Federal Building, Providence, Rhode Island. Roger T. Clapp, Esq., Grinnell Corporation, 260 West Exchange Street, Providence 3, Rhode Island. Jerrold G. Van Cise, Esq., Cahill, Gordon, Reindel & Ohl, 80 Pine Street, New York 5, New York.

[fol. 143] IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

No. 2785

UNITED STATES OF AMERICA,

v.

GRINNELL et al

Transcript of hearing—Boston, Mass. March 13, 1963

Before: Wyzanski, D. J.

* * * * * * *

[fol. 144] The Court. Have you that kind of optimism which leads you to believe that at the conclusion of the Government's case I am going to enter judgment for the defendant?

Mr. Fritz. I never give up the hope of that in any case where I represent the defendant.

The Court. All right. I understand you may have that optimism, but, on the whole isn't it likely that in an anti-trust case of this sort I will hear all the evidence on both sides?

Mr. Fritz. I am sure of that, sir.

* * * * * * *

[fol. 145] IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND—Civil Action No. 2785

DEFENDANTS' REQUEST FOR ADMISSIONS—filed July 9, 1963

[Title omitted]

Defendants American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware request plaintiff United States of America to admit, within ten days after service of this request, for the purpose of this action only and subject to

all pertinent objections to admissibility which may be interposed at the trial, the truth of the following facts:

1. Region 5 of the General Services Administration (hereinafter GSA) includes the states of Illinois, Indiana, Kentucky, Michigan, Ohio and Wisconsin.

2. As of September 30, 1961, GSA operated 643 Government-owned buildings in the United States, having a total area of approximately 103,844,266 square feet.

3. As of November 23, 1962, GSA operated 57 Government-owned buildings in Region 5 having a total area of approximately 15,482,975 square feet, comprising 14.9% of the total area of Government-owned, GSA-operated buildings in the United States.

4. During the fiscal year of 1961, GSA employed approxi-[fol. 146] mately 1,600 guards chargeable to "Operating Expenses" at a total cost of $8,577,144 for an annual average cost of $5,360.72 per guard.

5. During the fiscal year of 1961, GSA employed approximately 1,250 guards chargeable as "Reimburseable" at a total cost of $7,394,871, for an average annual cost of $5,915.90 per guard.

6. During the year 1962, in Region 5, GSA employed 291.25 guards, chargeable to "Operating Expense", at an approximate cost of $1,561,309.70, to guard Government-owned, GSA-operated buildings against losses caused by fire, burglary, negligence of personnel, malfunction of machinery and other hazards.

7. During the year 1962, in Region 5, GSA employed 28 guards charged as "Reimburseable", at an approximate cost of $165,645.20, to guard Government-owned, GSA-operated buildings against losses caused by fire, burglary, negligence of personnel, malfunction of machinery and other hazards.

8. In Region 5 during 1962, 35 of the 57 Government-owned, GSA-operated buildings, representing 61.4% of such buildings, were located in areas where central station electric protective service was then available to these buildings.

9. The 35 buildings referred to in item 8 had a total area of 11,528,260 square feet, representing approximately 74.46% of the area of Government-owned, GSA-operated buildings in Region 5.

[fol. 147] 10. In Region 5 during 1962, of the 35 Government-owned, GSA-operated buildings, located in areas where central station protective service was then available, five of such buildings, or 14,3% of the total, were protected in part by such service, at annual charges of $24,160.

11. In terms of area, the five buildings referred to in item 10 represent 18.65% of the total area of Government-owned, GSA-operated buildings in Region 5, and 25.05% of the area of Government-owned, GSA-operated buildings in Region 5 located in areas where central station electric protective service is available.

12. In Region 5 during 1962, 6 Government-owned, GSA-operated buildings, having a total area of 6,335,840 square feet, were protected against losses caused by fire, burglary, negligence of personnel, malfunction of machinery and other hazards by auxiliary, proprietary or remote station alarm systems at annual charges of $84,220.

13. The 6 buildings referred to in item 12 represent 10.53% of all Government-owned, GSA-operated buildings in Region 5, and 40.92% of the square foot area of all such buildings in Region 5.

14. Four of the buildings referred to in item 12 having an area of 4,879,740 square feet, were located in areas where central station electric protective service was then available to these buildings.

15. In Region 5 in 1962, 22 Government-owned, GSA-operated buildings, having an area of 8,568,501 square feet, [fol. 148] were located in areas served by competing central station companies.

16. The area of the 22 buildings referred to in item 15 represents 55.34% of the area of Government-owned, GSA-operated buildings in Region 5.

17. Of the 22 buildings referred to in item 15, four having an area of 2,824,915 square feet, were protected in part by central station electric protective service.

18. The four buildings referred to in item 17 were also protected in part by 55 guards employed by GSA.

19. Two other buildings in the group of 22 referred to in item 15 having a total area of 2,253,000 square feet, were protected by auxiliary, proprietary or remote station alarm services, and by 32 guards.

20. Of the remaining 16 buildings in the group referred to in item 15, two were unprotected and 14 were protected wholly by GSA employed guards against losses by fire, burglary, malfunction of machinery, negligence of personnel and other hazards.

21. For the 20 buildings in the group referred to in item 15 which had guard protection, GSA utilized 172.5 "Operating Expense" guards at an approximate cost of $924,724.20 and 16 "Reimburseable" guards at a charge of approximately $94,654.40.

22. In Region 5 during 1962, 290 guards employed by GSA to guard Government-owned, GSA-operated buildings [fol. 149] against losses by fire, burglary, malfunction of machinery, negligence of personnel and other hazards, were supervised by Detex or Simplex clock systems. In addition, ten guards were supervised by a "Local Guard Reporting System", and 19.25 guards were unsupervised.

23. In Region 5 during 1962, 39 Government-owned, GSA-operated buildings, having an approximate total area of 15,100,253 square feet, were protected against losses by fire, burglary, malfunction of machinery, negligence of personnel and other hazards by means of guards employed by GSA, and of these buildings 31, having an approximate total area of 11,676,299 square feet, were located in areas where central station electric protection service was then available to these buildings.

24. The area of the 39 buildings referred to in item 23 represents 97.5% of the area of Government-owned, GSA-operated buildings in Region 5.

25. The area of the 31 buildings referred to in item 23 represents 75.4% of the area of Government-owned, GSA-operated buildings in Region 5.

26. The manual entitled "Physical Protection, A GSA Handbook" dated May 20, 1960, states the official doctrine and opinions of GSA with respect to methods of protecting Government-owned GSA-operated buildings, and is published by the United States for the guidance of its officers and employees in the course of their official duties.

27. Set forth below as Appendix A, and made a part [fol. 150] hereof, are excerpts taken from the Handbook

described in item 26. Plaintiff is requested to admit that such excerpts are true and correct.

Yours, etc.,

Matthew W. Goring, Esq.
Attorney for Defendants,
American District Telegraph Company,
Holmes Electric Protective Company and
Automatic Fire Alarm Company of Delaware
Industrial Bank Building,
Providence, R. I. Bleakley, Platt, Schmidt, Hart & Fritz, Of counsel.

To: Noel E. Story, Esq., Antitrust Division, United States Department of Justice, Washington 25, D. C., Attorney for Plaintiff.

[fol. 151] APPENDIX A TO DEFENDANTS' REQUEST FOR ADMISSIONS

Chapter 1

4. *GSA Physical Protection Policy.* The laws establishing the responsibility of GSA for protection of facilities under its control do not specify the amount of physical protection to be provided. The policy of GSA is to provide reasonable protection for facilities, material, employees, and others using the facilities. Reasonable protection is defined as that degree of personnel and/or mechanical protection required in normal day-to-day operations to prevent serious damage, loss or interference from the hazards of fire, storm, or negligence, or from acts contrary to law or regulation. If, despite the protection provided, any of the above-described conditions occur, the protection force shall be prepared to take the emergency measures necessary to minimize resulting hardship, injury or interference.

5. *Protection Methods.* Protection of Federal property and persons employed in or visiting the premises is provided by the following methods:

b. *Automatic Detection Equipment.* Protection against intrusion may be provided entirely or in part by automatic

alarms, including automatic burglar alarms of the metallic type which operate by breaking an electric circuit, and electronic alarms which operate by the use of ultrasonic devices, photoelectric cells, capacitors, or sound detectors. Automatic fire protection may be provided by sprinklers and alarms which are activated by the thermostatic control or by the melting of certain metals following a sudden rise in temperature. Alarms may be local warning, they may be tied into a central station, the police or fire departments, or any combination thereof.

c. *Physical Barriers.* Protection of a facility beyond that provided by guards and/or alarms may be accomplished by the use of physical barriers to restrict or deny access to either the entire facility or specific areas. Barriers may be iron grilles, link or other type fences, bars, doors, locks, gates, vaults, or any other mediums which will serve to delay intrusion, define restricted areas, or direct the flow of personnel or vehicles. The effective use of barriers in certain areas in some facilities may serve to reduce or eliminate the guard and/or alarm requirements. The introduction of lighting around buildings has been found to be an effective deterrent to intrusion. If outside gates are locked after hours consideration should be given to providing keys to local Police and Fire Departments. An entrance bell or alarm should be installed at the gate so that authorized persons may alert the guard on patrol.

6. *Selection Of Protection Methods.* Before either personnel are assigned, or automatic alarm protection methods placed in operation, a survey of the facility shall be made, the points outlined in chap. 4-5 weighed, and the degree of protection necessary to protect the property determined. Initially, studies should be made with a view to protecting the building entirely with guard personnel. Other operating requirements, such as cleaning, elevator and boiler operation, and the possibility that combination positions would provide required protection, should be analyzed. The cost of these methods should be measured against the long range cost of installing automatic devices to provide at least the same degree of protection as the employment of guards or the reduced protection resulting from combination positions. The most economical and effective method should then be chosen. In some cases it may be

evident that automatic devices alone will not supply the same degree of protection as guarding, but it may be apparent that the installation of such equipment will reduce guard personnel requirements to a point where the combination of the two will provide adequate protection and reflect a substantial saving. Automatic devices are generally quite technical in nature. Full use should be made of such organizations as the Underwriter's Laboratories, Inc., and private firms specializing in this field which will cooperate in making surveys and recommendations based on particular factors of individual locations.

[fol. 152] Chapter 4

2. *Grouping of Operations and Control Centers.* Reasonable protection may be maintained and costs reduced by extending guard coverage. This is particularly true where facilities adjoin or are within easy walking distance; where there is a minimum of after hours operation; where security or storage is not vital; and where automatic alarm systems are installed in one or more of the locations. Such buildings may be grouped under single supervision and a guard patrol established for two or more locations. In the larger cities, control centers may be established with telephone or radio communication to the various buildings. The use of radio-equipped motor vehicles should be investigated for large, isolated, group, or control center operations.

4. *Alarm and Patrol Systems.* Many buildings are equipped with watchman report, and/or fire and/or burglar alarm systems. Watchman report systems usually consist of call boxes in various locations in the building connected electrically with a recording board in the guard or BM representative's office. In buildings without such equipment, it may be necessary to install watchman's portable clock systems, consisting of a recording clock carried by the guard, and actuating keys located at strategic positions on the patrol. This type of system is inexpensive to install and maintain and may be utilized efficiently for both inside and outside patrol routes. Fire and burglar alarm systems are connected to the guard or BM representative's office and/or directly to local police and fire departments,

and/or to a central station if certain contract services are used. It is essential that all alarm and patrol control systems be maintained in operating condition.

5. *Facility Coverage, Patrol Assignments, Manpower Allowance.* The following are guides for determining protection requirements:

a. *Factors Determining Coverage.* The establishment of guarding requirements is a local responsibility. Each facility must be looked upon as a separate entity and all pertinent factors considered in arriving at the degree of coverage required to reasonably safeguard that facility against disaster, damage, or acts contrary to law or regulation. The below listed factors are not meant to be all inclusive. They are designed to show that required protection services may not be fully determined by formula. They are to be used as guides only and not substituted for good judgment which must be exercised in meeting the protection problems of each facility. Reasonable protection of a facility is a fixed determination only as long as the factors going into the determination remain fixed. As the factors vary, so will the protection requirements. Since Federal facilities are not insured and the Government is, in effect, a self-insurer, a certain amount of risk is implied. Insurance companies will not insure bad risks and, as a self-insurer, neither should GSA.

(5) *Protection Equipment.* Protection equipment such as fencing, exterior lighting, secured openings, vaults, and automatic alarm systems serve to reduce risk and guarding requirements. The fire alarm system should be checked periodically to assure that it is adequate and in working order, and consideration should be given to the practicability of installing automatic detectors. Where possible automatic systems shall provide for signal transmission to the local fire and/or police departments. As an alternative, they shall be tied in to a central station.

(7) *Location.* An isolated location may require a greater degree of protection than a building in a congested area. Other factors such as alarm systems would be considered as would the availability of local protective services, type

of occupancy, etc. If a building is in an area where there are other GSA buildings a determination should be made of the advisability and feasibility of guarding the facility as part of a group of buildings with one guard having the responsibility for more than one location.

[fol. 153] Certificate of service [omitted in printing].

[fol. 154] [File endorsement omitted.]

[fol. 155] IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

Civil Action No. 2785

[Title omitted]

PLAINTIFF'S ANSWERS TO DEFENDANTS' REQUEST FOR ADMISSIONS—filed July 22, 1963

Plaintiff, United States of America, pursuant to Rule 36 of the Federal Rules of Civil Procedure, answers defendants' American District Telegraph Company, Holmes Electric Protective Company, and the Automatic Fire Alarm Company of Delaware Request to Admit, subject to all pertinent objections to admissibility which may be interposed at the trial, as follows:

R. 1. Region 5 of the General Services Administration (hereinafter GSA) includes the states of Illinois, Indiana, Kentucky, Michigan, Ohio, and Wisconsin.

A. 1. Plaintiff admits the truth of the matter stated in Item 1.

R. 2. As of September 30, 1961, GSA operated 643 Government-owned buildings in the United States, having a total area of approximately 103,844,266 square feet.

A. 2. Plaintiff admits the truth of the matter stated in Item 2.

[fol. 156] R. 3. As of November 23, 1962, GSA operated 57 Government-owned buildings in Region 5 having a total area of approximately 15,482,975 square feet, comprising 14.9% of the total area of Government-owned, GSA-operated buildings in the United States.

A. 3. Plaintiff admits the truth of the matter stated in Item 3.

R. 4. During the fiscal year of 1961, GSA employed approximately 1,600 guards chargeable to "Operating Expenses" at a total cost of $8,577,144 for an annual average cost of $5,360.72 per guard.

A. 4. Plaintiff admits the truth of the matter stated in Item 4.

R. 5. During the fiscal year of 1961, GSA employed ap-

proximately 1,250 guards chargeable as "Reimburseable" at a total cost of $7,394,871, for an average annual cost of $5,915.90 per guard.

A. 5. Plaintiff admits the truth of the matter stated in Item 5.

R. 6. During the year 1962, in Region 5, GSA employed 291.25 guards, chargeable to "Operating Expense", at an approximate cost of $1,561,309.70, to guard Government-owned, GSA-operated buildings against losses caused by fire, burglary, negligence of personnel, malfunction of machinery and other hazards.

A. 6. Plaintiff denies the truth of the matter stated in Item 6, except that plaintiff admits that during the year 1962, in Region 5, GSA employed 291.25 guards chargeable to "Operating Expense", at an approximate cost of $1,561,309.70.

R. 7. During the year 1962, in Region 5, GSA employed 28 guards charged as "Reimburseable", at an approximate cost of $165,645.20, to guard Government-owned, GSA-operated buildings, against losses caused by fire, burglary, negligence of personnel, malfunction of machinery and other hazards.

[fol. 157] A. 7. Plaintiff denies the truth of the matter stated in Item 7, except the plaintiff admits that during the year 1962, in Region 5, GSA employed 28 guards charged as "Reimburseable", at an approximate cost of $165,645.20.

R. 8. In Region 5 during 1962, 35 of the 57 Government-owned, GSA-operated buildings, representing 61.4% of such buildings, were located in areas where central station electric protective service was then available to these buildings.

A. 8. Plaintiff is unable to truthfully admit or deny the matter stated in Item 8 for these reasons:

Information available to the plaintiff indicates that the service area of an approved central station electric protection company is determined, to a great extent, by the length of time required to dispatch guards from the central station to the protected premises. Due to the relatively short period of time permitted for guard response, the plaintiff believes that effective service area of an approved central station electric protective company generally does not, without the addition of guard stations, extend beyond a twenty-mile radius of a central station. Moreover, in densely populated areas, with congested traffic conditions, plaintiff

believes that the effective service area of an approved central station electric protective company might not, in some instances, extend beyond a ten-mile radius of the central station.

Plaintiff has no knowledge, nor any reasonable means of obtaining knowledge, indicating the precise service area of each of the defendants central stations. A document entitled "Municipalities Served By ADT Central Stations" appears to indicate that ADT central station electric protective service might possibly be available to 37 of the 57 Government-owned, GSA-operated buildings in Region 5; [fol. 158] however, Item 8 of the Request to Admit states that 35 buildings were within the area served by central station electric protective service. Plaintiff has no knowledge, and for the above-stated reasons will not speculate, concerning the availability of central station electric protective service to each of the 57 Government-owned, GSA-operated buildings in Region 5.

Therefore, plaintiff is unable to truthfully admit or deny, as a matter of fact, that approved central station electric protective service, provided by the defendants or their competitors, was available to the 35 unidentified Government-owned, GSA-operated buildings in Region 5.

R. 9. The 35 buildings referred to in item 8 had a total area of 11,528,260 square feet, representing approximately 74.46% of the area of Government-owned, GSA-operated buildings in Region 5.

A. 9. Plaintiff is unable to truthfully admit or deny the matter stated in Item 9 for the reasons set forth in response to Item 8. That is, plaintiff cannot state, as a fact, that central station electric protective service was available to 35 unidentified buildings in Region 5. Plaintiff has no knowledge, and may not speculate, concerning the identity and location of those unidentified buildings deemed by the defendants to be located in areas in which central station electric protective service is available. Therefore, plaintiff is unable to state as a fact the area, in square feet, of those buildings to which central station electric protective service was available.

R. 10. In Region 5 during 1962, of the 35 Government-owned, GSA-operated buildings, located in areas where central station protective service was then available, five of

such buildings, or 14.3% of the total, were protected in part by such service, at annual charges of $24,160.

[fol. 159] A. 10. Plaintiff is unable to truthfully admit or deny, for the reasons stated in response to Item 8, that in Region 5 during 1962, central station electric protective service was available to 35 Government-owned, GSA-operated buildings.

Plaintiff admits only that five Government-owned, GSA-operated buildings in Region 5, or 14.3% of the total, were protected in part by central station protective service, at annual charges of $24,160.

R. 11. In terms of area, the five buildings referred to in Item 10 represent 18.65% of the total area of Government-owned, GSA-operated buildings in Region 5, and 25,05% of the area of Government-owned, GSA-operated buildings in Region 5 located in areas where central station electric protective service is available.

A. 11. Plaintiff admits only that five buildings in Region 5, protected in part by central station protective service, represent 18.65% of the total area of Government-owned, GSA-operated buildings in Region 5.

Plaintiff is unable to truthfully admit or deny, for the reasons set forth in response to Item 8, that these five buildings represent 25.05% of the area of Government-owned, GSA-operated buildings in Region 5 located in areas where central station electric protective service is available.

R. 12. In Region 5 during 1962, 6 Government-owned, GSA-operated buildings, having a total area of 6,335,840 square feet, were protected against losses caused by fire, burglary, negligence of personnel, malfunction of machinery and other hazards by auxiliary, proprietary or remote station alarm systems at annual charges of $84,220.

[fol. 160] A. 12. Plaintiff denies the truth of the matter stated in Item 12, except that plaintiff admits that in Region 5 during 1962, annual service charges for auxiliary, proprietary or remote station alarm systems were $84,220.

R. 13. The 6 buildings referred to in item 12 represent 10.53% of all Government-owned, GSA-operated buildings in Region 5, and 40.92% of the square foot area of all such buildings in Region 5.

A. 13. Plaintiff denies the truth of the matters stated in Item 13.

R. 14. Four of the buildings referred to in item 12 having an area of 4,879,740 square feet, were located in areas where central station electric protective service was then available to these buildings.

A. 14. Plaintiff is unable to truthfully admit or deny the matter stated in Item 14. For the reasons set forth in plaintiff's response to Item 8, plaintiff is unable to state, as a fact, those buildings in Region 5 to which central station electric protective service was available. Moreover, the document entitled "Municipalities Served By ADT Central Stations" indicates that the cities of Dayton, Ohio, Louisville, Kentucky, Sharonville, Ohio, Chicago, Illinois, New Haven, Indiana, Battle Creek, Michigan and Warren, Ohio might possibly have been served by ADT central station electric protective service; therefore, plaintiff is unable to truthfully admit or deny, and may not speculate, concerning the location of those Government-owned, GSA-operated buildings which did, in fact, have central station electric protection service available.

R. 15. In Region 5 in 1962, 22 Government-owned, GSA-operated buildings, having an area of 8,568,501 square feet, were located in areas served by competing central station companies.

[fol. 161] A. 15. Plaintiff is unable to truthfully admit or deny the matter stated in Item 15 for the reasons stated in response to Item 8; that is, plaintiff cannot truthfully state the availability of central station electric protection service to each of the Government-owned, GSA-operated buildings in Region 5.

R. 16. The area of the 22 buildings referred to in item 15 represents 55.34% of the area of Government owned, GSA-operated buildings in Region 5.

A. 16. Plaintiff is unable to truthfully admit or deny the matter stated in Item 16 for the reasons stated in response to Items 8 and 15. As plaintiff is unable to truthfully identify those buildings in Region 5 which are located in areas served by competing central stations, plaintiff, therefore, cannot truthfully state the area of such buildings.

R. 17. Of the 22 buildings referred to in item 15, four having an area of 2,824,915 square feet, were protected in part by central station electric protective service.

A. 17. Plaintiff denies the truth of the matter stated in Item 17.

R. 18. The four buildings referred to in item 17 were also protected in part by 55 guards employed by GSA.

A. 18. Plaintiff denies the truth of the matter stated in Item 18, except that plaintiff admits that four buildings in Region 5 utilized 55 guards employed by GSA.

R. 19. Two other buildings in the group of 22 referred to in item 15 having a total area of 2,253,000 square feet, were protected by auxiliary, proprietary or remote station alarm services, and by 32 guards.

[fol. 162] A. 19. Plaintiff is unable to truthfully admit or deny, for the reasons stated in response to Items 8 and 15, that two of the unidentified buildings referred to in Item 19 were located in areas where central station electric protective service was then available.

Plaintiff admits only that two buildings in Region 5, having a total area of 2,253,000 square feet, were protected by auxiliary, proprietary or remote station alarm services, and by 32 guards.

R. 20. Of the remaining 16 buildings in the group referred to in item 15, two were unprotected and 14 were protected wholly by GSA employed guards against losses by fire, burglary, malfunction of machinery, negligence of personnel and other hazards.

A. 20. Plaintiff is unable to truthfully admit or deny, for the reasons stated in response to Items 8 and 15, that the sixteen unidentified buildings referred to in Item 20 were located in areas where central station electric protective service was available.

Plaintiff admits only that two buildings in Region 5 were unprotected, and fourteen buildings in Region 5 were protected wholly by GSA employed guards.

R. 21. For the 20 buildings in the group referred to in item 15 which had guard protection, GSA utilized 172.5 "Operating Expense" guards at an approximate cost of $924,724.20 and 16 "Reimbursable" guards at a charge of approximately $94,654.40.

A. 21. Plaintiff is unable to truthfully admit or deny, for the reasons stated in response to Items 8 and 15, that the 20 unidentified buildings referred to in Item 21 were located in areas where central station electric protection service was available.

Plaintiff admits only the for 20 buildings in Region 5 which had guard protection, GSA utilized 172.5 "Operating Expense" guards at an approximate cost of $924,724.20 and 16 "Reimbursable" guards at a charge of approximately $94,654.40.

[fol. 163] R. 22. In Region 5 during 1962, 290 guards employed by GSA to guard Government-owned, GSA-operated buildings against losses by fire, burglary, malfunction of machinery, negligence of personnel and other hazards, were supervised by Detex or Simplex clock systems. In addition, ten guards were supervised by a "Local Guard Reporting System", and 19.25 guards were unsupervised.

A. 22. Plaintiff denies the truth of the matter stated in Item 22, except that plaintiff admits that in Region 5 during 1962, ten guards were supervised by a "Local Guard Reporting System".

R. 23. In Region 5 during 1962, 39 Government-owned, GSA-operated buildings, having an approximate total area of 15,100,253 square feet, were protected against losses by fire, burglary, malfunction of machinery, negligence of personnel and other hazards by means of guards employed by GSA, and of these buildings 31, having an approximate total area of 11,676,299 square feet, were located in areas where central station electric protection service was then available to these buildings.

A. 23. Plaintiff denies the truth of the matter stated in Item 23, except that;

Plaintiff admits only that in Region 5 during 1962, 39 Government-owned, GSA-operated buildings, having an approximate total area of 15,100,253 square feet, utilized guards employed by GSA.

Plaintiff is unable to truthfully admit or deny, for the reasons stated in response to Item 8, that 31 of these buildings were located in areas where central station electric protection service was then available.

[fol. 164] R. 24. The area of the 39 buildings referred to in item 23 represents 97.5% of the area of Government-owned, GSA-operated buildings in Region 5.

A. 24. Plaintiff admits the truth of the matters stated in Item 24.

R. 25. The area of the 31 buildings referred to in item 23 represents 75.4% of the area of Government-owned, GSA-operated buildings in Region 5.

A. 25. Plaintiff is unable to truthfully admit or deny, for the reasons stated in response to Item 8, the matter stated in Item 25.

R. 26. The manual entitled "Physical Protection, A GSA Handbook" dated May 20, 1960, states the official doctrine and opinions of GSA with respect to methods of protecting Government-owned, GSA-operated buildings, and is published by the United States for the guidance of its officers and employees in the course of their official duties.

A. 26. Plaintiff denies the truth of the matters stated in Item 26, except that plaintiff admits that the manual entitled "Physical Protection, A GSA Handbook" dated May 20, 1960, is published by the United States for the guidance of its officers and employees in the course of their official duties with respect to methods of protecting Government-owned, GSA-operated buildings.

R. 27. Set forth below as Appendix A, and made a part hereof, are excerpts taken from the Handbook described in item 26. Plaintiff is requested to admit that such excerpts are true and correct.

A. 27. Plaintiff admits the truth of the matter stated in Item 27.

[fol. 165] Hugh P. Morrison, Jr., counsel for plaintiff, United States of America, being duly sworn, deposes and says:

That he has read the foregoing "Plaintiff's Answers to Defendants' Request for Admissions", and to the best of his information and belief, the statements therein are true.

/s/ Hugh P. Morrison, Jr., Attorney, Department of Justice.

Subscribed and sworn to before me at Washington, D. C., this 19 day of July, 1963.

Sara B. McGraw, Notary Public.

My Commission Expires May 1, 1966.

[fol. 166] Certificate of service [omitted in printing.]

[fol. 167] [File endorsement omitted.]

[fol. 168] In United States District Court for the District of Rhode Island

United States Court
Boston 9

Chambers of Charles E. Wyzanski, Jr., District Judge

September 6, 1963

Matthew W. Goring, Esq.
Hinckley, Allen, Salisbury & Parsons
Industrial Bank Biulding
Providence 3, Rhode Island
Roger T. Clapp, Esq.
Grinnell Corporation
260 W. Exchange Street
Providence 3, Rhode Island
Jerrold G. Van Cise, Esq.
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80 Pine Street, New York 5

Raymond J. Pettine, Esq.
United States Attorney
Federal Building, Providence
Frank A. Fritz, Esq.
120 Broadway
New York 5, New York
Lee Loevinger, Esq.
Assistant Attorney General
Antitrust Division
Department of Justice, Washington
Attn: Noel E. Story, Esq.

United States v. Grinnell et al CA 2785

Gentlemen:

I should appreciate hearing from you within the next fortnight as to whether all counsel, after conferring among themselves, are agreed as to a time when they would like this case heard. I should like it clearly understood that because of my engagements in connection with Massachusetts cases, I may not be able to hear this case at exactly the time counsel would wish, but I shall try to make arrangements which will meet the convenience of all of us. Please let me know how many trial days you expect the case will take.

Sincerely, ——, ——.

[fol. 169] IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

BLEAKLEY, PLATT, SCHMIDT, HART & FRITZ
120 Broadway
New York 5, N. Y. (10005)
Tel. Rector 2-2000
Cable Address
Platfield

New York,
September 19, 1963.

The Honorable Charles E. Wyzanski, Jr.
District Judge
United States Court
Boston 9, Massachusetts

Re: United States v. Grinnell, et al. (CA 2785)

Dear Judge Wyzanski:

We have conferred with counsel for the Government and Grinnell Corporation concerning the subject of your letter of September 6, 1963. For the past five months, counsel for all parties have been exploring the possibility of working out an acceptable consent decree and this week a written proposal of suggested relief was submitted by defendants to Government counsel.

In view of this, counsel suggest that, subject to your wishes, a trial date be set for not earlier than January 1964 and that they have the opportunity of conferring with the Court in November, if it then appears appropriate, for the purpose of reporting the progress of their negotiations or establishing trial procedures.

We are informed that the Government's case may take five days or possibly less. We find it difficult at this time to estimate the number of trial days required by defendants since we presently have little detailed knowledge of the Government's documentary and other evidence. Indeed, without that knowledge, the time required by defend-
[fol. 170] ants to prepare their defense is somewhat speculative. However, subject to revision when such knowledge comes to us and subject to developments at pre-trial con-

ferences, we expect that the defense will probably require not more than three weeks.

We are authorized to represent that all defense counsel concur in the foregoing.

Respectfully yours, Frank A. Fritz.

FAF:ms

cc: to: Matthew W. Goring, Esq., Messrs. Hinckley, Allen, Salisbury & Parsons, Industrial Bank Building, Providence 3, Rhode Island. Roger T. Clapp, Esq., Grinnell Corporation, 260 West Exchange Street, Providence 3, Rhode Island. Jerrold G. Van Cice, Esq., Messrs. Cahill, Gordon, Reindel & Ohl, 80 Pine Street, New York 5, New York. Raymond J. Pettine, Esq., United States Attorney, Federal Building, Providence, Rhode Island. Noel E. Story, Esq., Antitrust Division, United States Department of Justice, Washington 25, D. C.

[fol. 171] In United States District Court for the District of Rhode Island

United States Department of Justice
Washington, D.C. 20530

September 20, 1963.

RLW:BJR:NES
60-339-1

Honorable Charles E. Wyzanski, Jr.
United States District Judge
District of Massachusetts
United States Courthouse
Boston, Massachusetts

Re: United States v. Grinnell Corporation, et al. Civil No. 2785 (D. Rhode Island)

Dear Judge Wyzanski:

This is in reply to Your Honor's letter of September 6, 1963 directed to counsel for all parties in *United States* v. *Grinnell Corporation, et al.* relating to a mutually agreeable trial date.

On September 18, 1963 it was mutually agreed that counsel for the parties shall be prepared for trial at the earliest date convenient to Your Honor after January 1, 1964. It was further agreed between counsel that a pre-trial conference, to be held at the Court's convenience during November 1963, would be desirable in arranging the details of presentation of the evidence at the trial. The Government presently anticipates that five trial days will be necessary for the presentation of its case.

Pursuant to Your Honor's suggestion of January 10, 1963, counsel for all parties have explored the possibility of a consent decree settlement in this action. Consent negotiations are presently in progress, and it is expected [fol. 172] that the outcome of such negotiations will be known during early November, 1963.

Sincerely yours, Robert L. Wright, Acting Assistant Attorney General, Antitrust Division. By: Noel E. Story, Attorney, Department of Justice.

cc: Raymond J. Pettine, Esquire, United States Attorney, 221 Federal Building, Providence 3, Rhode Island. Matthew W. Goring, Esquire, Hinckley, Allen, Salisbury & Parsons, Industrial Bank Building, Providence 3, Rhode Island. Roger T. Clapp, Esquire, Grinnell Corporation, 260 West Exchange Street, Providence 1, Rhode Island. Denis G. McInerney, Esquire, Cahill, Gordon, Reindel & Ohl, 80 Pine Street, New York 5, New York. Frank A. Fritz, Esquire, Bleakley, Platt, Schmidt, Hart & Fritz, 120 Broadway, New York 5, New York.

[fol. 173] IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES COURT
Boston 9

Chambers of Charles E. Wyzanski, Jr., District Judge.

September 23, 1963.

Frank A. Fritz, Esq.
Bleakley, Platt, Schmidt, Hart & Fritz
120 Broadway
New York 5, New York

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Grinnell Corporation
260 West Exchange St.
Providence 3, Rhode Island

Raymond J. Pettine, Esq.
United States Attorney
Federal Building
Providence, Rhode Island

Matthew W. Goring, Esq.
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Providence 3, Rhode Island

Jerrold G. Van Cise, Esq.
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80 Pine Street
New York 5, New York

Noel E. Story, Esq.
Antitrust Division
United States Department of Justice
Washington 25, D.C.

United States v. Grinnell, et al., C.A. 2785

Gentlemen:

I have Mr. Fritz' letter of September 19 and Acting Assistant Attorney General Wright's letter of September 20, both in reply to my letter of September 6th.

In accordance with views of both correspondents, I shall be glad to allow further time for the exploration of the possibilities of the parties reaching agreement upon a proposed consent decree.

On Monday, November 25, 1963 at 2:00 p.m. I shall conduct a pretrial on this case, unless before that time you have informed me that you either have reached or are about to reach agreement with respect to the disposition that you would like to have made of this case.

Sincerely, ——, ——.

[fol. 174] IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

BLEAKLEY, PLATT, SCHMIDT, HART & FRITZ
120 Broadway
New York 5, N. Y. (10005)
Tel. Rector 2-2000
Cable Address
Platfield

New York,
November 15, 1963.

The Honorable Charles E. Wyzanski, Ja.
United States District Judge
United States Courthouse
Boston, Massachusetts

Re: United States v. Grinnell Corporation, et al. Civil No. 2785 (D. Rhode Island)

Dear Judge Wyzanski:

We were informed by your letter of September 23, 1963, that a pre-trial will be held herein on November 25 unless prior thereto you were notified that the parties had agreed or were about to agree upon the disposition of this case.

On September 18, defendants submitted to the Government a written proposal for settlement and on November 12 the Government submitted a written counter-proposal. The parties are agreed that the defendants should have adequate opportunity to consider the recent Government proposal and that the interest of the parties would be best served by deferring the pre-trial until not earlier than mid-December, subject, of course, to your convenience.

We, on behalf of all defendants, accordingly request that [fol. 175] the proposed pre-trial be postponed.

Respectfully yours, Frank A. Fritz.

cc: to: Matthew W. Goring, Esq., Messrs. Hinckley, Allen, Salisbury & Parsons, Industrial Bank Building, Providence 3, Rhode Island. Roger T. Clapp, Esq., Grinnell Corporation, 260 West Exchange Street, Providence 3, Rhode Island. Jerrold G. Van Cice, Esq., Messrs. Cahill,

Gordon, Reindel & Ohl, 80 Pine Street, New York 5, New York. Raymond J. Pettine, Esq., United States Attorney, Federal Building, Providence, Rhode Island. Noel E. Story, Esq., Antitrust Division, United States Department of Justice, Washington 25, D. C.

[fol. 176] IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES DEPARTMENT OF JUSTICE
Washington, D.C. 20530

WHO:BJR:NES
60-339-1

November 18, 1963.

Honorable Charles E. Wyzanski, Jr.
United States District Judge
District of Massachusetts
United States Courthouse
Boston, Massachusetts

Re: United States v. Grinnell Corporation, et al. Civil No. 2785 (D. Rhode Island)

Dear Judge Wyzanski:

This is in reference to Your Honor's letter dated September 23, 1963, in which you advised the parties to this action that a pretrial conference will be held on November 25, 1963 at 2:00 p.m., unless before that time, the parties have advised the Court they have reached or are about to reach agreement with respect to the disposition to be made of this case.

On November 12, 1963 the Government submitted to defense counsel a proposed consent decree in this matter. Counsel for defendants have requested plaintiff to join in a request to the Court to postpone the date of the pretrial conference now set for November 25, 1963 to mid-December, 1963. Defense counsel have asserted that prior to December 16, 1963 they will state their position on each item of relief contained in the Government's proposed con-

sent decree. On the basis of this information a determination may be made as to whether consent negotiations should be terminated.

[fol. 177] All parties to this action have agreed that December 16, 1963 will be a convenient date for a pre-trial conference. It is requested that the Court set a new date for a pre-trial conference at the Court's earliest convenience on or after December 16, 1963.

Sincerely yours, William H. Orrick, Jr., Assistant Attorney General, Antitrust Division. By: Noel E. Story, Attorney, Department of Justice.

cc: Raymond J. Pettine, Esquire, United States Attorney, 221 Federal Building, Providence 3, Rhode Island. Matthew W. Goring, Esquire, Hinckley, Allen, Salisbury & Parsons, Industrial Bank Building, Providence 3, Rhode Island. Roger T. Clapp, Esquire, Grinnell Corporation, 260 West Exchange Street, Providence 1, Rhode Island. Denis G. McInerney, Esquire, Cahill, Gordon, Reindel & Ohl, 80 Pine Street, New York 5, New York. Frank A. Fritz, Esquire, Bleakley, Platt, Schmidt, Hart & Fritz, 120 Broadway, New York 5, New York.

[fol. 178] IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES COURT
Boston, 02109

Chambers of Charles E. Wyzanski, Jr., District Judge.

November 19, 1963.

Frank A. Fritz, Esq.
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120 Broadway
New York 5, New York

Roger T. Clapp, Esq.
Grinnell Corporation
260 West Exchange St.
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Providence, Rhode Island

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Hinckley, Allen, Salisbury & Parsons
Industrial Bank Building
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Jerrold G. Van Cise, Esq.
Cahill, Gordon, Reindel & Ohl
80 Pine Street
New York 5, New York

Noel E. Story, Esq.
Antitrust Division
United States Department of Justice
Washington 25, D.C.

United States v. Grinnell, et al., Rhode Island C.A. 2785

Gentlemen:

I have Mr. Fritz' letter of November 15 with respect to the above-entitled matter and in accordance with what I understand to be the wish of all the defendants, I shall cancel the pre-trial scheduled for November 25 and reschedule it for Wednesday, December 18, 1963 at 10:00 A.M.

Sincerely, ——, ——.

cc: Neale D. Murphy.

[fol. 179] IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 2785

UNITED STATES OF AMERICA

v.

GRINNELL CORPORATION, AMERICAN DISTRICT TELEGRAPH COMPANY, HOLMES ELECTRIC PROTECTIVE COMPANY, AUTOMATIC FIRE ALARM COMPANY OF DELAWARE.

Transcript of pre-trial conference—Boston, Mass., December 18, 1963

APPEARANCES:

Noel E. Story, Esq. and Hugh P. Morrison, Jr., Esq., Anti-trust Division, counsel for the plaintiff.

Denis G. McInerney, Esq., Roger T. Clapp, Esq. and Gerald C. Van Cise, Esq., counsel for the defendant Grinnell Corporation.

Frank A. Fritz, Esq., Frank A. Fritz, Jr., Esq., Matthew W. Goring, Esq., Robert L. Conkling, Esq. and Averill M. Williams, Esq., counsel for the defendants American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware.

[fol. 180] The Clerk. Civil Action Number 2785, United State of America versus Grinnell Corporation, et al.

The Court. Will somebody please tell me the present status of the case? I don't know who wants to speak with regard to this.

Mr. Story. I will speak, your Honor.

The Court. All right. Mr. Story. You are the plaintiff.

Mr. Story. Sir, first of all, the purpose of the request for this pre-trial conference was to report to the Court what has occurred since our last meeting with the Court and also request or ascertain from the Court the manner in which the Court would like to have the evidence which has been obtained by discovery in this matter processed for final submission into the evidence in this case.

First of all, sir, I would like to talk about the efforts

on the part of the parties to this law suit to settle the case in accordance with the suggestion of your Honor when we were here last Spring.

Starting in about April of this year and continuing through the summer, we have had several meetings be- [fol. 181] tween the parties in an effort to settle the case. In September the negotiations had reached a point where the defendants submitted a proposed Consent Decree to the government. I think the date of that was September the 18th.

After receiving the defendants' proposed Consent Decree, the government on November the 12th submitted a counter offer of a Consent Decree.

Since November 12 the parties have had two extended negotiating sessions. We have another session scheduled for December 30th of this year.

Unfortunately, your Honor, from the standpoint of the government, I am unable to report here today that the parties are in substantial agreement on the terms of a settlement decree in this matter, and in view of the fact that this matter has been pending for some time, and the fact that we have had numerous sessions in an attempt to settle the case—I don't know whether your Honor knows it or not but prior to the time that the Complaint in this matter was filed——

The Court. I know nothing about that.

Mr. Story. Well, I will tell you then right now, sir. [fol. 182] Prior to the time that the Complaint in this case was filed, in April of 1961, we held several conferences with counsel for the defendants in an effort to settle the case prior to the time the Complaint was filed.

Then starting again last February or March, after your Honor spoke to us, we have had a rather extensive negotiating program. I think I can report that we have reached some agreement on some of the issues, but I am inclined to think that the parties are still quite a ways apart. So based on that, your Honor, I thought that, from the government's standpoint, it would be desirable at this time to have a pre-trial conference and generally find out how your Honor would like to handle the presentation of this case in the event we are not able to get together on settlement of the case in the near future.

Now, first of all, your Honor, discovery has been completed in this case. In that regard, in accordance with your Honor's instructions, the plaintiff has designated those portions of the Deposition transcripts which the government intends to offer into evidence.

[fol. 183] The government has also, in accordance with that schedule, submitted to the defendants a list of all documents that it intends to introduce into evidence in this matter, and the government has also submitted a list of witnesses which in this particular case would be Depositions of Witnesses for the most part, your Honor.

Now the defendants have at this point designated to the government those portions of the Depositions that the government is using in part that they would like for the Court to consider and, in addition, the defendants have noted their objections to Deposition transcripts which the government has indicated that it will offer into evidence. So far as the completion of the schedule that your Honor set for us, that has been completed at this time.

Now very basically, your Honor, the government's case has reached the point where I can briefly tell you something as to the extent of the evidentiary presentation that we intend to make to the Court. First of all, we have designated under two thousand pages of Deposition transcripts. I cannot give you the exact number because I don't know whether I can rely on the calculations of my secretary. I will say it is under two thousand pages.

[fol. 184] Originally when we submitted a list of the documents that we intended to introduce in this case, I think there were some six hundred of them, and since that time in an effort to lessen the burden on this Court, we have cut our documents down, and I think that our final cut-down list of the documents will be under four hundred documents.

In addition to that, the government will of course rely on certain answers of the defendants to the Plaintiff's Interrogatories, and at the present time and for the past few months counsel for the parties have attempted to enter into several stipulations dealing with the market position of the defendants in this matter and also items concerning the volume of commerce involved in the central station detection service industry. We think that with regard to

the stipulations, we are in substantial agreement on them now, and I have every reason to believe we will be able to stipulate to a lot of routine things, such as the amount of commerce involved and the market position of the defendants.

In the event, your Honor, that we are unable to agree on these stipulations and the other things—the defendants [fol. 185] in our negotiations with them have indicated that they will authenticate the documents which we have received from their files, so we won't have that problem, I don't think, and if we do it will only be for very few of them. Now in the event that we are able to enter into these stipulations, your Honor, the government does not intend in its case-in-main to present any witnesses to the Court.

The Court. Any live witnesses.

Mr. Story. Any live witnesses, that is right. It will be a presentation of those portions of the Depositions or documents, relying on answers and the stipulations.

Now, sir, in an effort to be able to present some plan to your Honor here so as to expedite the presentation of this case counsel for the parties had a meeting in New York yesterday, and knowing where the preparation stood at that time, we have tentatively agreed, or, I think we have agreed on certain steps which should expedite the introduction of our evidence before the Court.

Now the first thing that we thought would be of great assistance to the Court would be excerpting from the [fol. 186] Deposition transcripts those portions of the transcripts that the parties will rely upon.

For instance, if the government has designated pages 10 to 20 and the defendants have designated pages 20 to 30, that will be excerpted and the reason we suggested that, your Honor, is because some of these Deposition transcripts run up to many hundreds of pages, and the government has designated only a few pages of those, in many cases less than twenty pages. We think that if we will excerpt the portions that the parties are interested in, it would be of great assistance to the Court.

Secondly, we hope, as far as the Deposition transcripts are concerned, to meet together—at the present time there is quite a number of objections to portions of the

Depositions that the government has indicated it will offer —have a meeting together with counsel for the parties in an attempt to resolve as many of those objections as possible from the excerpted portions of the transcripts. Those objections to the transcripts which we cannot resolve among ourselves, we would like to ask the Court for another pre-trial conference some time in mid-February [fol. 187] and have your Honor rule on the objections at that time for the Deposition transcripts, the objections that are left.

Now as to documents, I mentioned a moment ago that the government originally submitted a list, and we have cut that list down considerably, and by January 10 of 1964 the government will have in the hands of counsel for the defendants a cut-down list of documents, and by that I mean, your Honor, they have had notice of substantially all the documents for some two months, so they won't have to deal with a great volume of documents. I will give them a cut-down list by January the 10th.

In addition to that, so as to assist the defendants in forming their objections, to the extent possible the government will submit a list of the issues in this case which it intends to prove, and with that list of issues we will designate the numbers of those documents which we intend to use to support those various issues.

We have indicated to counsel for the defendants that we hope to have that done by January the 10th. I think we will be able to do that, your Honor.

After the defendants have our cut-down list of docu- [fol. 188] ments by January 25th they will submit to the government their objections to the government's documents, the documents the government intends to introduce. Then some time thereafter, along about February 1st, we hope to get together and try to resolve among ourselves as many of the objections to the documents as possible, and then the ones that are remaining we would like the Court to hear in mid-February, if it is possible to get a pre-trial conference at that time.

Generally, sir, that is my interpretation of what we have done, and if I have erred in any way I am sure Mr. Fritz will assist us in straightening it out.

The Court. Thank you, Mr. Story. Mr. Fritz, do you want to say anything?

Mr. Fritz. Your Honor, what I have to say is very brief. The conference we held yesterday was most helpful in resolving many of the questions that we had, so far as time is concerned, and I think that Mr. Story has accurately stated what in substance we agreed to.

I think it will cut down the work of all of us and cut down the work of the Court.

[fol. 189] There was one thing Mr. Story did not emphasize today that I understood yesterday he would do, and that is about January 10th they would furnish us a brief of the issues that are tied in to the various documents to be used, and I think that probably still is our understanding.

The Court. Is that correct, Mr. Story?

Mr. Story. Yes, your Honor. I stated it poorly, I guess.

Mr. Fritz. As to the documents—they have designated to us some three thousand documents, and I am happy to hear that they are going to cut this down to the figure of four hundred. That will be of great help to me and everybody else in the case. I really had not appreciated that. But I think, sir, that your Honor can see from what Mr. Story has said that we have tried to work with the government so as to cut down any unnecessary work and to stipulate where we can stipulate. We intend to continue that type of program. So that we are in accord, I think, both of us, counsel for Grinnell and myself, representing the Alarm Companies, on this proposed schedule, government's counsel submitted to your Honor this morning.

[fol. 190] I think Mr. Story, in outlining to your Honor what has happened since the general admonition from the Court in January, that we explore the possibility of adjustment, perhaps deprecates what we have actually done.

I don't know whether your Honor would care to hear more about that or not. But the fact is that when we left here almost a year ago, we conferred with our people, and that takes quite a lot of time. In the early part of this year, and I think in the Spring or April, we had our first conference with the government and between April and September 15th I think we had five conferences with the

government in trying to explore what might be done. As a result, as Mr. Story has said, we presented a formal proposed document on September the 18th. Two months later we got a counter proposal. We have had two extended conferences about that. We have another one set for December the 30th.

Now I think, frankly, that we have made a great deal of progress down the road of practical adjustment of this matter, but I recognize of course, as Mr. Story has indicated to your Honor, that there are two or three very knotty [fol. 191] problems. But I do not think that is unusual in a situation of this kind.

We might not be able to resolve them on December 30th. But my feeling about this is that it would be unfortunate if all of the time and thought that we as counsel and the officials of the companies who are devoted to this thing should to use the vernacular of the street "go down the drain" without completely exhausting this aspect of the case. I would hope that not only would we see to it among ourselves that we do exhaust it but I would express the hope that if we reach the point where there is still something unresolved, we may have the assistance of the Court in this matter.

I think that is about all I have to say, sir.

The Court. Does any other counsel wish to say anything?

Mr. McInerney. Yes, your Honor. Denis McInerney representing Grinnell. I felt I should introduce myself because we have hesitated to inject ourselves into the pre-trial prior to this time. There is a community of interest among the defendants and it has been well-represented by [fol. 192] Mr. Fritz.

We do have a further thought to add to the presentation. As government counsel has told you, we have now substantially completed discovery in this case. We are at the stage where government counsel has requested that at our next pre-trial your Honor rule on a number of objections. Those objections total over four hundred separate objections to the thousands of pages of Depositions that have been designated.

The Court. They do now. Conceivably they will be reduced.

Mr. McInerney. Down to a very few. We may also have

problems of admissibility of documentary evidence that counsel have designated although they should be fewer in number. However, it seems to us that we are at the stage now, having substantially completed discovery, where, if it is not possible to reach agreement among the parties at this December 30th conference, that the next more appropriate stage, rather than burdening your Honor with ruling on the admissibility of evidence, would be a pre-trial on the question of relief as recommended by the Judicial Conference Handbook, with which your Honor is familiar, [fol. 193] I am sure, having been one of the authors.

The Court. I am not one of the authors but I do know about it.

Mr. McInerney. If I may just quote one sentence from it, your Honor. This recommendation is as follows: After discovery has been substantially completed, particularly in civil anti-trust cases brought by the government, one or more pre-trial conferences should be devoted to the question of the relief sought by the plaintiff.

Now following that recommendation, there is a discussion which indicates this has two objectives. The first is that in a case of this magnitude there will be questions not only of the relevancy of the documents offered by the government but as to whether they are so material that the record ought to be encumbered with them, and in order to help winnow out the wheat from the chaff it is important that the Court know what the objectives of the government are in the case.

Now this prayer for relief, while it does give a number of specific instances of relief that could be offered, that is, requested, it has the usual prayer of "such other and [fol. 194] further relief" and as we know from discussions with overnment counsel they read much into that.

There is, therefore, an area here for the Court to be informed of what the real issues are in this case, what the substantial issues are in this case, and if settlement discussions do bog down we feel that for the reason that it will aid the Court in determining what is truly material to the issues in this case and what kind of a record is absolutely needed here, and for the further reason of course that it may have the beneficial effect of your Honor's good offices of having the parties reach further agreement,

at least narrowing the issues in the case, if not eliminating the need for trial entirely, that this would be the next most appropriate step rather than a pre-trial conference devoted to ruling on the admissibility of evidence.

I would be glad to go into that further if your Honor wishes.

The Court. I will give you an opportunity in a moment. Does any other counsel want to be heard? I would like to know how far there is agreement among defendants' counsel with respect to the suggestion just made because, [fol. 195] if I understand the suggestion in its full scope, it really is an invitation to the Court to participate in a discussion of relief without addressing itself to the merits.

Mr. McInerney. On the assumption of liability, your Honor, we would be willing to have or enter into a discussion on that assumption.

Mr. Story. May I be heard, your Honor?

The Court. Yes.

Mr. Story. From the government's standpoint I disagree wholeheartedly in what Mr. McInerney has suggested to the Court. It would appear to me that this is an unusual suggestion, that the Court get involved in the ordinary hum-drum of a negotiation.

The Court. Hum-drum? It is the whole heart of the matter. Nobody minds an adjudication which is purely declaratory, a slap on the wrist. What people object to is the relief. It certainly isn't hum-drum detail. It is the heart of the matter.

Mr. Story. All right, sir. I agree with your Honor on that. But I do think that your Honor ought to look at this case on the merits so that you can have some indication as [fol. 196] to the type of offense we have here, and only after such time as your Honor has a certain amount of knowledge of the factual situation here could you actually, I think, intelligently participate in a Consent Decree negotiation, and the only way that I know that your Honor could get that information would be to hear the case on the merits and then go into the relief situation.

The Court. Well, I really am rather surprised at this position, both of Grinnell and of the government, but I will allow other counsel to speak. Up to now each counsel has

taken the reverse of the position which I would have anticipated.

Mr. Fritz. My position on this, if your Honor please, is a very simple one. We do not of course agree with the government's view on liability in this case, and I don't suppose we ever will until we get some adjudication one way or the other, but we have a practical approach to this thing. We all have to live and we don't think that living in the confines of a case like this for most of our lives constitutes living.

The Court. The lawyers or the companies or both?

[fol. 197] Mr. Fritz. Everybody. It probably is less important from the lawyers' aspect than the companies. I am really thinking about the client. I think the practical necessities of living for corporations and the people dependent upon the corporations require that we look at this thing in a cold, hard way and, therefore, I would welcome frankly a consideration by the Court of the relief aspect of this case.

While it is not done every day in these cases, it has been done in other cases, and I don't think that your Honor has to know every nook and cranny in this case in order to be of the help that your Honor can be.

I think the matters concerning relief could be perhaps adequately briefed with an outline of the information to the Court so your Honor would have a clear picture of what is involved. There are a few complicated questions here, and I think they are going to be quite few by the time we get through.

If we can cut these knots with the aid of the Court, I think it would be a much better conclusion for everybody concerned than to spend a month or five or six weeks that [fol. 198] would be involved in the trial and with the risks of everybody involved, including the government.

The Court. Thank you. Does anybody else wish to be heard?

Mr. McInerney. I would just like to add to my remarks a footnote taken from the Judicial Conference Handbook citing for the recommendation I have read the West Coast Oil Case in which the Court did the very thing that we think would be appropriate here in the event that we are

not able to reach an agreement. I am sure that your Honor is well aware that this is not an extraordinary suggestion as government counsel would have us believe.

Thank you.

The Court. Does anybody wish to say anything? I am going to deal first with Mr. McInerney's suggestion and then with the other matter. If the parties are themselves unable to adjust the matter, as Mr. Fritz says, by December 30, 1963, I believe that the most advantageous course would be for the government clearly to indicate, in accordance with Mr. Story's proposal, exactly which two thousand more or less pages of the Depositions the government proposese to offer in its case-in-chief, exactly [fol. 199] which four hundred more or less documents the government proposes to offer and a brief correlating those pages and documents to what the government regards as the essential or more important issues in the case.

It also would be helpful if at that time the government would outline in relatively short compass, I mean twenty to fifty pages, its over-all view of the basis of liability of each and all of the defendants. Also at that stage I should like the government to prepare a quite specific draft of the relief it would seek were it to prevail. That is, I would like to see the text of the operative provisions of the decree. I am not so much concerned with the preliminary recitals. And after all of those documents have been prepared I would then be ready to accept from defendants any brief that they chose to submit with respect to the facts in so far as facts would be helpful in a conference relating to relief. That is to say I would like them to have the opportunity of preparing a twenty to fifty page summary of what they regard as the facts with respect to liability. And also, if they have any views with respect to relief, I would welcome from them a brief with respect [fol. 200] to relief. At that stage I would be quite prepared to hold a conference directed primarily to problems of relief rather than to problems of ruling upon the admissibility of evidence or other objections.

It is my view that this is not only in accordance with what is quite customary practice but would be very helpful in this situation. Needless to say, in any type of pre-trial

settlement discussion each side states to the Judge what is its view of liability, if any, and in the simple cases, after such an exchange of views, it is quite common, where the relief sought is solely in dollars and cents, for each party to express its view of an appropriate dollars and cents recovery and for the Judge to nudge the parties to agreement by taking into account their views, which may not necessarily be his view, of the possible liability.

I see no reason why that is not an equally good pattern where the matter is more complicated and involves probably no monetary relief but entirely equitable relief, if any equitable relief is proper.

If, for example, the government were to disclose a pat-[fol. 201] tern of violation of law which the Court said were to be proved this Court would take Draconian measures of great severity, one basis of possible adjustment would be presented.

If, on the other hand, the Court indicated that even if the government proved everything that it set forth in its interpretation of the facts the Court would direct only moderate relief of such-and-such a pattern, that indication by the Court might also lead to an adjustment or Consent Decree.

In other words, I think what is reasonable to do under the circumstances is to allow all parties to have an awareness of how far the Court would be likely to go if the facts were as strong as the government says they are.

In such a situation it is quite true that the defendants are running some risk because the Court necessarily in talking about such matters will not know whether the government's contention in interpreting the facts is correct or the defendants' interpretation of the facts is correct or some middle course is correct, and presumably, if the Judge makes any suggestion, he will have to make it on [fol. 202] the basis of the strongest possible showing of the government. That is to say, if the government believes that it has very strong evidence with respect to violation and points to particular pages in the Depositions and particular documents and particular answers to interrogatories or what-not, at the stage of the discussion which I foresee under Mr. McInerney's proposal, I would have to

go very far in assuming that there is something to what the government says. I cannot assume that the government's *prima facie* case is going to be demolished.

Mr. McInerney. We have no intention that you would, your Honor.

The Court. I do not see what loss the government can sustain, and if the defendants want to find out how I feel about the matter, if the government's case stands uncontradicted, that is up to them.

Mr. Fritz. Well, what your Honor is saying now happens so often every day in litigation, in matters of lesser importance, that I still think it is a practical approach.

The Court. All right.

Mr. Story. Your Honor, may I be heard just a moment? [fol. 203] The Court. Yes.

Mr. Story. I am particularly concerned, your Honor, about your Honor engaging in the settlement of this particular case, having no more of the facts before your Honor than I am going to be able to put into a document of 20 to 50 pages.

The Court. If you can't put it in 20 to 50 pages, you won't win in this Court. I tell you now I am firmly persuaded of the correctness of the great praise I heard of George Wharton Pepper by a Chief Justice of the United States for being able in eight pages to put the whole of one of the most complicated cases of which I know anything, and I am equally persuaded by Mr. Justice Brandeis' statement that any case which could not be stated orally in thirty minutes to the Supreme Court was not a case which could be won in that Court.

Mr. Story. Well, your Honor, I would just like to call to your Honor's attention that it has been my intention, and I have stated it in this Court before, that I think that the combination that we have here in this particular case is one of the most predatory, vicious monopoly situations we [fol. 204] have had in fifty years.

The Court. If you use those adjectives you are wasting pages. I can come to the conclusions with respect to characterization, and eliminate all adjectives of that kind and you will have more chance of persuading me. Every time I see such an adjective my hackles rise and I tend to be-

lieve there is nothing but rhetoric in the government's case. Is that clear?

Mr. Story. Very well, your Honor.

The Court. All right. Is there anything else?

Mr. Fritz. Well, I have just one question. I am not clear as to what time element your Honor has in mind for the various suggestions which the Court made.

The Court. I was coming to that.

Mr. Fritz. I'm sorry.

The Court. I think that the best thing would be to have you gentlemen spend the balance of the day, if it is required, to draw up an Order incorporating the general lines of my suggestions and making more specific particular dates. I will meet your convenience as far as time [fol. 205] goes, but I have no idea how long it will take you to prepare the kind of briefs to which I referred. I am sure that the government ought to prepare its briefs first and the defendants ought to prepare their briefs afterwards and the government, if it finds it necessary, may make a short written reply to the defendants' briefs. I will allow you gentlemen reasonable latitude to fix the date and you can pretty much fix your own date for my hearing it. That is to say you can suggest a week during which you would like to be heard and I will assign a day for hearing it.

I would think that what we are really dealing with under these circumstances is for the government and the defendants for the moment to assume that the only matter before the Court at the end of the trial would be the government's evidence, which, of course, is an unrealistic assumption, but which is the basis on which, as I understand it, you want to find out what kind of relief I would be likely to allow if the government's case stood virtually uncontradicted. Am I right? That is what you are seeking?

Mr. McInerney. That is what I had in mind, your Honor, [fol. 206] yes.

The Court. Now, gentlemen, you will be able, won't you, to draw up a particular schedule setting forth exactly what dates are convenient to you and what date you would like me to hear you, and you will be able to spell out what is to be done on each date, won't you?

Mr. Fritz. Yes, your Honor.

Mr. Story. Yes, your Honor. Do you want that done today?

The Court. Why leave Boston without doing it?

Mr. Story. Sir?

The Court. Why leave Boston without doing it? I could do it in half an hour but I assume that you could do it in a little longer time because there are more of you.

Mr. Story I thought, in order to follow your Honor's instructions, if we had a copy of the transcript to assist us in the matter——

The Court. Oh, I don't think I have said anything that is difficult. It is a question of on what dates you will present the pages of the transcript, the list of documents, any [fol. 207] other pre-trial material, such as answers to interrogatories, and on what date you will present a correlation of those matters to the principal issues in such a way as to involve a statement of facts as the government views it and on what date you will present a statement with respect to the relief you seek in specific terms, on what date a reply document or documents will come from the defendants with respect to their view of the government's evidence and their view of appropriate relief, if any, and on what date you will on behalf of the government file any reply that you seem to find necessary, and in what week you want me to hear argument or discussion with respect to possible relief if the government's evidence were to stand uncontradicted.

Isn't that all—just to put down those dates? I think that can be done very quickly.

Mr. Story. Very well, your Honor.

The Court. All right.

* * * * * * *

[fol. 208] Reporter's Certificate to foregoing transcript omitted in printing.

[fol. 209] IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

Civil Action 2785

UNITED STATES OF AMERICA,

v.

GRINNELL CORPORATION, AMERICAN DISTRICT TELEGRAPH COMPANY, HOLMES ELECTRIC PROTECTIVE COMPANY, AND AUTOMATIC FIRE ALARM COMPANY OF DELAWARE.

ORDER—December 18, 1963

Wyzanski, D.J.

The parties having appeared by their respective attorneys at a pretrial conference held herein on December 18, 1963, it is hereby Ordered:

(1) On or before February 1, 1964, plaintiff shall serve upon defendants and file:

(a) an exact designation of all pages or portions of pages of transcripts of depositions and an exact designation of each document upon which it intends to rely in its case-in-chief;

(b) a statement of the main issues to which each document primarily relates; and

(c) a copy of plaintiff's trial brief containing appropriate references to transcripts of depositions and to documents.

(2) On or before February 14, 1964, plaintiff shall serve upon defendants and file a brief, not in excess of fifty (50) pages, stating its views as to the basis of liability of each defendant, together with a specific draft of the relief sought by plaintiff, including the text of the operative portions of the decree plaintiff would request in the event it prevails.

(3) On or before April 6, 1964, defendant Grinnell and the defendant Alarm Companies shall each serve upon plaintiff and file briefs, not in excess of fifty (50) pages each, in response to plaintiff's brief stating their views [fol. 210] with respect to the relief which would be ap-

propriate in the event plaintiff prevails, together with specific provisions of a proposed decree.

(4) On or before April 13, 1964, plaintiff shall serve upon defendants and file a reply brief, if plaintiff be so advised.

(5) On a date subsequent to April 13, 1964, subject to the Court's convenience, a pretrial conference shall be held herein for the primary purpose of discussing the relief which would be appropriate in the event plaintiff prevails.

D. J., United States District Judge.

[fol. 211] IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

Civil No. 2785

UNITED STATES OF AMERICA, Plaintiff,

v.

GRINNELL CORPORATION; AMERICAN DISTRICT TELEGRAPH COMPANY; HOLMES ELECTRIC PROTECTIVE COMPANY; AND AUTOMATIC FIRE ALARM COMPANY OF DELAWARE, Defendants.

PROPOSED FORM OF JUDGMENT AND PROPOSED FORM OF JUDGMENT AFTER TRIAL—Filed February 14, 1964

Pursuant to the Order of the Court dated December 18, 1963, Plaintiff submits herewith a Proposed Form of Judgment and a Proposed Form of Judgment After Trial.

Noel E. Story, Hugh P. Morrison, Jr., Attorneys, Department of Justice

[File endorsement omitted.]

[fol. 212] UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

Civil Action No. 2785

Entered: —

UNITED STATES OF AMERICA, Plaintiff,

v.

GRINNELL CORPORATION; AMERICAN DISTRICT TELEGRAPH COMPANY; HOLMES ELECTRIC PROTECTIVE COMPANY; AND AUTOMATIC FIRE ALARM COMPANY OF DELAWARE, Defendants.

Final Judgment

Plaintiff, United States of America, having filed its complaint herein on April 13, 1961; the defendants, by their attorneys, having appeared and filed their answers to such complaint denying the substantive allegations thereof; and the matter having come on for trial and the Court having entered its findings of fact and conclusions of law on —, 1964

Now, Therefore, it is hereby

Ordered, Adjudged And Decreed as follows:

I

The Court has jurisdiction of the subject matter hereof and of the parties hereto. The defendants have combined and conspired to restrain, and to monopolize, and have monopolized and attempted to monopolize interstate trade and commerce in furnishing central station electric protective service in violation of Sections 1 and 2 of the Act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended.

[fol 213] UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

Civil No. 2785

Filed:—

UNITED STATES OF AMERICA, Plaintiff,

v.

GRINNELL CORPORATION; AMERICAN DISTRICT TELEGRAPH COMPANY; HOLMES ELECTRIC PROTECTIVE COMPANY; AND AUTOMATIC FIRE ALARM COMPANY OF DELAWARE, Defendants.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

(1) The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court at any time after the expiration of thirty (30) days following the date of filing of this Stipulation without further notice to any party or other proceedings, either upon the motion of any party or upon the Court's own motion, provided that plaintiff has not withdrawn its consent as provided herein;

(2) The plaintiff may withdraw its consent hereto at any time within said period of thirty (30) days by serving notice thereof upon the other party hereto and filing said notice with the Court;

(3) In the event plaintiff withdraws its consent hereto, this Stipulation shall be of no effect whatever in this or [fol. 214] any other proceeding and the making of this Stipulation shall not in any manner prejudice any consenting party in any pending or subsequent proceedings.

Dated: —, 1964

For the Plaintiff: William H. Orrick, Jr., Assistant Attorney General.

——, ——, Attorneys, Department of Justice.

For the Defendants:—

[fol. 215] UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

Civil Action No. 2785

Entered:—

UNITED STATES OF AMERICA, Plaintiff,

v.

GRINNELL CORPORATION; AMERICAN DISTRICT TELEGRAPH COMPANY; HOLMES ELECTRIC PROTECTIVE COMPANY; and AUTOMATIC FIRE ALARM COMPANY OF DELAWARE, Defendants.

Final Judgment

Plaintiff, United States of America, having filed its complaint herein on April 13, 1961; the defendants, by their attorneys, having appeared and filed their answers to such complaint denying the substantive allegations thereof; and the parties, by their attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting an admission by any party in respect of any such issue of fact or law usable in other litigation by any party other than the plaintiff.

Now, Therefore, before any testimony has been taken herein, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto and upon admissions of the defendants made for the sole purpose of establishing, in any suit for damages filed by the plaintiff based upon violations alleged in the complaint herein or in connection with any proceedings brought to modify, vacate or enforce this Final Judgment, that the defendants have violated the antitrust laws as alleged herein, it is hereby Ordered, Adjudged And Decreed as follows:

I

The Court has jurisdiction of the subject matter hereof and of the parties hereto. The complaint states claims upon which relief can be granted against the defendants [fol. 216] under Sections 1 and 2 of the Act of Congress of

July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended.

II

As used in this Final Judgment:

(A) "ADT" shall mean defendant American District Telegraph Company, a New Jersey corporation;

(B) "AFA" shall mean defendant Automatic Fire Alarm Company of Delaware, a Delaware corporation;

(C) "Holmes" shall mean defendant Holmes Electric Protective Company, a New York corporation;

(D) "Grinnell" shall mean defendant Grinnell Corporation, a Delaware corporation;

(E) "Service" shall mean central station electric protective service, i.e., the service of furnishing protection of premises against fire, burglary or other hazards by installing on the premises devices, wire or other apparatus designed to detect any such hazards and to transmit alarm and supervisory signals to central stations, located off the protected premises, which are approved by insurance inspection and rating organizations for the furnishing of such protection;

(F) "Equipment" shall mean all apparatus, including wires installed in the premises of subscribers for the purpose of furnishing service;

(G) "Devices" shall mean all equipment and apparatus used in furnishing service;

(H) "Central station corporation" shall mean a company organized and equipped to furnish service, including an approved central station and all necessary equipment;

(I) "Person" shall mean any individual, partnership, [fol. 217] firm, association, corporation or other legal entity; and

(J) "Subsidiary" shall mean any person controlled by or more than fifty per cent of whose voting stock is directly or indirectly controlled by a defendant.

III

The provisions of this Final Judgment applicable to any defendant shall apply also to each of its subsidiaries, successors and assignees, and to their respective officers, directors, agents, servants and employees, and to all other persons in active concert or participation with such defendant who shall have received actual notice of this Final Judgment by personal service or otherwise. Each defendant is ordered and directed to take such steps as are reasonably appropriate to procure compliance by its subsidiaries, officers, directors, agents, servants and employees with the terms of this Final Judgment. Any person acquiring assets pursuant to Section VIII shall not be considered a successor bound by the terms of this Final Judgment.

IV

Defendants are jointly and severally enjoined and restrained from directly or indirectly entering into, adhering to or claiming or maintaining any right under any contract, agreement, understanding, plan or program with any other person to:

(A) Eliminate or restrain competition in the furnishing of service;

(B) Allocate or divide territories, markets, fields or customers in the furnishing of service;

(C) Fix or maintain charges, methods of charging or any terms or conditions for the furnishing of service to any third person;

(D) Exchange information concerning charges, method of charging or other terms and conditions of sale at or upon which service is to be furnished to any third person;

[fol. 218] (E) Submit noncompetitive or collusive bids or quotations for furnishing service;

(F) Refrain from bidding or quoting on furnishing service;

(G) Hinder, restrict, limit or prevent any person from obtaining service;

(H) Jointly participate in the revenues derived from the installation of equipment or the furnishing of service; or

(I) Restrict or limit the sale of any devices used in the furnishing of service.

V

Defendants are jointly and severally enjoined and restrained from:

(A) Taking any action having the effect of excluding or foreclosing any person from engaging in furnishing service;

(B) Discriminating in the furnishing of service by furnishing any service at unreasonably low charges, for the purpose or with the effect of destroying competition or eliminating a competitor;

(C) Acquiring, directly or indirectly, the assets, business, good will, any of the corporate stock or any financial or beneficial interest in (1) any person engaged in furnishing service in any business district or area where any defendant is furnishing or is attempting to furnish service; or (2) any person engaged in furnishing service in any other business district or area except upon establishing to the satisfaction of this Court that such acquisition will not substantially lessen competition or tend to create a monopoly in the furnishing of service in any area of the country or the business district or community involved;

(D) Furnishing service to any customer in an area where the defendant is the only source of such service at a rate in excess of the annual average of that charged by defendant for the same type of service in all of the cities where there is another source for such service;

(E) Entering into any contract or agreement for the furnishing of service in excess of one year's duration;

[fol. 219] (F) With respect to contracts for the furnishing of services entered into prior to the date of entry of this Final Judgment, failing to notify such customers that they may, without penalty, terminate such contract one year from the initial date thereof or ninety (90) days from the date of notification, whichever is later;

(G) Enforcing, entering into or claiming any rights under any contract, agreement or understanding that any person will not engage in furnishing service;

(H) Tying or conditioning, by varying rates or otherwise, the furnishing of service at one location to or upon the furnishing of service to the same customer at another location;

(I) Bidding for the furnishing of service to any govern-

mental body or agency thereof, where the defendant has participated in the preparation of the specifications for the job and such specifications are so drawn as to effectively preclude any person engaged in furnishing service from submitting a responsive bid on that job;

(J) Paying any commission or other remunerations to any agent or representative of any insurance company, or companies engaged in the installation of automatic sprinkler systems, for leads or information as to prospective customers for service;

(K) Soliciting any contract for the furnishing of service except on a basis whereby the local personnel of ADT solicits customers in the area in which they are stationed, rather than soliciting chain accounts at the headquarters of such accounts.

VI

(A) Agreements under the terms of which Grinnell, ADT, AFA, or Rhode Island Electric Protective Company, jointly furnish equipment and/or service to subscribers or participate in revenues from service contracts are ordered cancelled by the parties thereto.

(B) Defendants are jointly and severally enjoined and restrained from renewing, adhering to or maintaining any contract or agreement cancelled pursuant to subsection (A) [fol. 220] above or entering into any like or similar contract or agreement with each other.

VII

Defendants are each ordered and directed:

(A) To assign to each service customer all right, title and interest to equipment installed or to be installed on the premises of the customer, without further charge as to existing installations and, as to future installations, for such defendant's regular installation charge;

(B) On request of any person desiring to furnish service in any area where the defendant has the only central station, to permit, on reasonable terms and conditions, signals from the premises of subscribers of such person to be transmitted to the central station of the defendant and, further, to advise such person promptly of any hazard-indicating signals received from such premises;

(C) On request of any person, to sell upon nondiscriminatory terms and conditions any devices manufactured by such defendant for use in furnishing service.

VIII

It is an objective of this Section and Final Judgment that competitive conditions be restored or created, and the dominant position of the defendant ADT be curtailed, in the furnishing of service. To this end, defendants ADT and Grinnell shall take such steps as may be necessary to achieve that objective at least to the extent specified in the Appendix A hereto. Defendants ADT and Grinnell shall, as specified in Appendix A either (a) establish central station corporation in each city, each of which shall be fully equipped and capable of furnishing services to the extent specified in Appendix A, and divest new corporations upon the best terms obtainable to a person not affiliated in any manner with any defendant, or, (b) sell and transfer upon the best terms obtainable, to any such person, service contracts in the amounts specified. The types of service contracts so sold or transferred shall be in the [fol. 221] same proportion as the types of all service contracts held by ADT in the city involved, or served by the ADT central station in the area where the customers are located. The action and transactions required by this Section shall be completed within six (6) years from the date of entry of this Final Judgment; approximately one-third by the end of the first two years and another one-third by the end of four (4) years.

In a city where any central station corporation must be established, an eligible purchaser shall have the option of acquiring the corporation without the central station equipment and, if not desired, defendants shall not be required to include that equipment in the assets of the corporation.

At the end of ten (10) years from the date of entry of this Final Judgment, unless the defendants can show to the satisfaction of this Court that effective competition has been restored or established in the furnishing of service in each and all of the cities listed in Appendix B hereto and in the United States in general, the Court shall enter such order or orders as it deems necessary requiring the same or similar action to achieve the objective of this Sec-

tion and this Final Judgment in any or all of the cities listed in Appendix B hereto.

IX

Defendant Grinnell is ordered and directed to divest within one year from the date of entry of this Final Judgment all shares of stock of, and any other financial interest in, defendant's AFA and Holmes and within one year from the date of completion of the requirements of Section VIII above with respect to Appendix (A) hereto, all shares of stock of, and any other financial interest in, defendant ADT. Such divestiture shall be to a person or persons in which defendant Grinnell does not have any financial interest, or a person or persons not otherwise affiliated with any defendant.

X

For the purpose of securing compliance with this Final [fol. 222] Judgment, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant, made to its principal office, be permitted, subject to any legally recognized privilege:

(A) Access during the office hours of said defendant, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant, relating to any matters contained in this Final Judgment; and

(B) Subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers and employees of such defendant, who may have counsel present, regarding any such matters.

Upon such written request, the defendant shall submit reports in writing in respect to any such matters as may from time to time be reasonably necessary to the enforcement of this Final Judgment. No information obtained by the means provided in this Section shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the plaintiff, except for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

XI

Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment to apply to the Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any provision thereof, for the enforcement of compliance therewith, and for punishment of violation thereof.

Dated: —, 1964

——, ——, United States District Judge.

[fol. 223] Appendix A

1. *Akron, Ohio:* Form central station corporation having service contracts yielding at least $125,000 service charges annually.

2. *Atlanta, Georgia:* Form central station corporation having service contracts yielding at least $125,000 service charges annually, with option to acquire, within one year after divestiture, service contracts yielding an additional $75,000 service charges annually.

3. *Baltimore, Maryland:* Form central station corporation having service contracts yielding at least $125,000 service charges annually, with option to acquire, within one year after divestiture, service contracts yielding an additional $75,000 service charges annually. If existing local competitor receives less than $125,000 service charges, offer to sell service contracts in an amount necessary to reach that level.

4. *Boston, Massachusetts:* Give local competitor an option to acquire service contracts yielding at least $125,000 service charges annually or, if it does not exercise the option within six months, form central station corporation having service contracts yielding at least $125,000 service charges annually.

5. *Bridgeport, Connecticut:* Form central station corporation having service contracts yielding at least $125,000 service charges annually.

6. *Buffalo, New York:* Form central station corporation having service contracts yielding at least $125,000 service charges annually, with option to acquire, within one year

after divestiture, service contracts yielding an additional $125,000 service charges annually.

7. *Chicago, Illinois:* Sell the two ADT central stations located nearest to the main central station.

8. *Cincinnati, Ohio:* Give local competitor option to acquire service contracts yielding at least $125,000 annually or, if it does not exercise the option within six months, form [fol. 224] central station corporation yielding at least $125,000 service charges annually.

9. *Cleveland, Ohio:* Form central station corporation having service contracts, from customers of ADT's main central station, yielding at least $125,000 service charges annually, and sell the existing central station located nearest to that main central station.

10. *Columbus, Ohio:* Form central station corporation having service contracts yielding at least $125,000 service charges annually, with option to acquire, within one year after divestiture, service contracts yielding and additional $25,000 service charges annually.

11. *Dayton, Ohio:* Give local competitor option to acquire service contracts yielding at least $25,000 service charges annually.

12. *Detroit, Michigan:* Form central station corporation having service contracts yielding at least $125,000 service charges annually, with option to acquire, within one year after divestiture, service contracts yielding an additional $100,000 service charges annually.

13. *Fort Worth, Texas:* Give local competitor option to acquire service contracts in Fort Worth yielding at least $75,000 service charges annually.

14. *Grand Rapids, Michigan:* Form central station corporation having service contracts yielding at least $125,000 service charges annually.

15. *Hartford, Connecticut:* Form central station corporation having service contracts yielding at least $125,000 service charges annually, with option to acquire, within one year after divestiture, contracts yielding an additional $50,000 service charges annually.

16. *Houston, Texas:* Give smallest local competitor option to acquire service contracts yielding at least $125,000 service charges annually.

17. *Huntington Park, California:* Form central station

corporation having service contracts yielding at least $125,000 service charges annually, with option to acquire, within [fol. 225] one year after divestiture, service contracts yielding an additional $75,000 service charges annually.

18. *Indianapolis, Ind.:* Offer, to the two local competitors, to sell to one of them service contracts yielding at least $50,000 service charges annually.

19. *Jacksonville, Florida:* Form central station corporation having service contracts yielding at least $125,000 service charges annually.

20. *Jersey City, N. J.:* Form central station corporation having service contracts yielding at least $125,000 service charges annually, with option to acquire, within one year after divestiture, service contracts yielding an additional $75,000 service charges annually.

21. *Kansas City, Mo.:* Offer to sell the smallest local competitor, and if not accepted, offer to sell to the other local competitor, service contracts yielding service charges in an amount that will bring the competitor total service charges collected to $125,000 annually; if sale not accomplished, form central station corporation yielding at least $125,000 service charges annually.

22. *Long Island City, New York:* Offer to sell to local competitor service contracts yielding at least $125,000 service charges annually and form central station corporation having service contracts yielding at least $125,000 service charges annually.

23. *Louisville, Ky.:* Form central station corporation having service contracts yielding at least $125,000 service charges annually, with option to acquire, within one year after divestiture, service contracts yielding an additional $75,000 service charges annually.

24. *Memphis, Tenn.:* Form central station corporation having service contracts yielding at least $125,000 service charges annually, with option to acquire, within one year after divestiture, service contracts yielding an additional $50,000 service charges annually.

25. *Miami, Florida:* Form central station corporation [fol. 226] having service contracts yielding at least $125,000 service charges annually.

26. *Mineola, New York:* Form central station corpora-

tion having service contracts yielding at least $125,000 service charges annually.

27. *Minneapolis, Minn.:* Give local competitor option to acquire service contracts yielding at least $100,000 service charges annually.

28. *Nashville, Tenn.:* Form central station corporation having service contracts yielding at least $125,000 service charges annually.

29. *Newark, New Jersey:* Give smallest competitor option to acquire service contracts yielding at least $100,000 service charges annually and, if the option is not exercised within six months, form central station corporation having service contracts yielding at least $125,000 service charges annually

30. *New Haven, Conn.:* Form central station corporation having service contracts yielding at least $125,000 service charges annually.

31. *New Orleans, La.:* Form central station corporation having service contracts yielding at least $125,000 service charges annually, with option to acquire, within one year after divestiture, service contracts yielding an additional $75,000 service charges annually.

32. *Oakland, Calif.:* Form central station corporation having service contracts yielding at least $125,000 service charges annually, with option to acquire, within one year after divestiture, service contracts yielding an additional $75,000 service charges annually.

33. *Oklahoma City, Oklahoma:* Form central station corporation having service contracts yielding at least $125,000 service charges annually.

34. *Omaha, Nebraska:* Form central station corporation having service contracts yielding at least $125,000 service charges annually.

35. *Paterson, New Jersey:* Form central station corporation having service contracts yielding at least $125,000 service charges annually, with option to acquire, within one year after divestiture, service contracts yielding an additional $75,000 service charges annually.

[fol. 227] 36. *Pittsburgh, Pa.:* Offer local competitor option to acquire service contracts yielding at least $75,000 service charges annually; if offer not accepted form central

station corporation yielding at least $125,000 service charges annually.

37. *Portland, Oregon:* Form central station corporation having service contracts yielding at least $125,000 service charges annually, with option to acquire, within one year after divestiture, service contracts yielding an additional $75,000 service charges annually.

38. *Richmond, Virginia:* Form central station corporation having service contracts yielding at least $125,000 service charges annually.

39. *Rochester, New York:* Form central station corporation having service contracts yielding at least $125,000 service charges annually.

40. *San Francisco, California:* Offer to sell to local competitor service contracts yielding at least $100,000 service charges annually and, if not sold within six months, form central station corporation having service contracts yielding at least $125,000 service charges annually.

41. *San Jose, California:* Form central station corporation having service contracts yielding at least $125,000 service charges annually.

42. *Seattle, Washington:* Form central station corporation having service contracts yielding at least $125,000 service charges annually, with option to acquire, within one year after divestiture, service contracts yielding an additional $75,000 service charges annually.

43. *Springfield, Mass.:* Form central station corporation having service contracts yielding at least $125,000 service charges annually.

44. *Syracuse, New York:* Form central station corporation having service contracts yielding at least $125,000 service charges annually.

[fol. 228] 45. *Toledo, Ohio:* Form central station corporation having service contracts yielding at least $125,000 service charges annually.

46. *Trenton, New Jersey:* Form central station corporation having service contracts yielding at least $125,000 service charges annually.

47. *Washington, D.C.:* Offer to sell to local competitor service contracts yielding at least $100,000 service charges annually and, if not sold within six months, form central

station corporation having service contracts yielding at least $125,000 service charges annually.

48. *Winston Salem, North Carolina:* Form central station corporation having service contracts yielding at least $125,000 service charges annually.

[fol. 229] Appendix B

1. Albany, New York
2. Allentown, Pa.
3. Birmingham, Alabama
4. Brockton, Mass.
5. Camden, New Jersey
6. Canton, Ohio
7. Cedar Rapids, Iowa
8. Charleston, South Carolina
9. Chattanooga, Tenn.
10. Des Moines, Iowa
11. Dubuque, Iowa
12. Duluth, Minn.
13. East St. Louis, Ill.
14. El Paso, Texas
15. Erie, Pa.
16. Evansville, Ind.
17. Flint, Michigan
18. Ft. Wayne, Ind.
19. Galveston, Texas
20. Jackson, Mich.
21. Kalamazoo, Mich.
22. Knoxville, Tenn.
23. Lansing, Mich.
24. Lincoln, Nebraska
25. Madison, Wisconsin
26. Muncie, Ind.
27. Muskegon, Mich.
28. New Brunswick, New Jersey
29. Oshkosh, Wisconsin
30. Peoria, Illinois
31. Portland, Maine
32. Quincy, Ill.
33. Reading, Pa.
34. Rockford, Ill.
35. Rock Island, Ill.
36. Sacramento, Calif.
37. Saginaw, Mich.
38. Salem, Mass.
39. Salt Lake City, Utah
40. San Antonio, Texas
41. San Diego, Calif.
42. San Fernando, Calif.
43. Savannah, Ga.
44. Scranton, Pa.
45. Sioux City, Iowa
46. Sioux Falls, South Dakota
47. South Bend, Indiana
48. Spokane, Washington
49. Springfield, Ohio
50. St. Joseph, Mo.
51. Tacoma, Washington
52. Terre Haute, Ind.
53. Utica, New York
54. Waterbury, Conn.
55. White Plains, New York
56. Wichita, Kansas
57. Wilmington, Delaware
58. Worcester, Mass.
59. Youngstown, Ohio

[fol. 230] IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

Civil Action 2785

UNITED STATES OF AMERICA, Plaintiff,

v.

GRINNELL CORPORATION, AMERICAN DISTRICT TELEGRAPH COMPANY, HOLMES ELECTRIC PROTECTIVE COMPANY AND AUTOMATIC FIRE ALARM COMPANY OF DELAWARE, Defendants.

DEFENDANTS' PROPOSED CHANGES IN PLAINTIFF'S PROPOSED FORM OF JUDGMENT.

Roger T. Clapp, Matthew W. Goring, Attorneys for Defendants.

Bleakley, Platt, Schmidt, Hart & Fritz, Cahill, Gordon, Reindel & Ohl, Of Counsel.

[fol. 231] IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

Civil Action 2785

UNITED STATES OF AMERICA, Plaintiff,

v.

GRINNELL CORPORATION, AMERICAN DISTRICT TELEGRAPH COMPANY, HOLMES ELECTRIC PROTECTIVE COMPANY AND AUTOMATIC FIRE ALARM COMPANY OF DELAWARE, Defendants.

DEFENDANTS' PROPOSED CHANGES IN PLAINTIFF'S PROPOSED FORM OF JUDGMENT.*

Plaintiff, United States of America, having filed its complaint herein on April 13, 1961; the defendants, by their attorneys, having appeared and filed their answers to such complaint denying the substantive allegations thereof; and the parties, by their attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting an admission by any party in respect of any such issue of fact or law [usable in other litigation by any party other than the plaintiff].

Now, Therefore, before any testimony has been taken herein, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto [and upon admissions of the defendants made for the sole [fol. 232] purpose of establishing, in any suit for damages filed by the plaintiff based upon violations alleged in the complaint herein or in connection with any proceedings brought to modify, vacate or enforce this Final Judgment, that the defendants have violated the antitrust laws as alleged herein], it is hereby

Ordered, Adjudged and Decreed as follows:

---

* This proposal follows the Government's proposal verbatim, with brackets indicating proposed deletions and italics indicating proposed additions.

I

The Court has jurisdiction of the subject matter hereof and of the parties hereto. The complaint states claims upon which relief can be granted against the defendants under Sections 1 and 2 of the Act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended.

II

As used in this Final Judgment:

(A) "ADT" shall mean defendant American District Telegraph Company, a New Jersey corporation;

(B) "AFA" shall mean defendant Automatic Fire Alarm Company of Delaware, a Delaware corporation;

(C) "Holmes" shall mean defendant Holmes Electric Protective Company, a New York corporation;

(D) "Grinnell' shall mean defendant Grinnell Corporation, a Delaware corporation;

(E) "Service" shall mean central station electric protective service, i.e., the service of furnishing protection of premises against fire, burglary or other hazards by installing on the premises devices, wire or other apparatus designed to detect any such hazards and to transmit alarm and supervisory signals to central stations, located off the protected premises, which are approved by insurance in-
[fol. 233] spection and rating organizations for the furnishing of such protection;

(F) "Equipment" shall mean all apparatus, including wires, installed in the premises of subscribers for the purpose of furnishing service;

(G) "Devices" shall mean all equipment and apparatus used in furnishing service;

(H) "Central station corporation" shall mean a company organized *for the purpose of furnishing service* [and equipped to furnish service, including an approved central station and all necessary equipment];

(I) "Person" shall mean any individual, partnership, firm, association, corporation or other legal entity; *however any defendant, its employees and wholly-owned sub-*

sidiaries shall be considered one person for the purposes of this Final Judgment; and

(J) "Subsidiary" shall mean any person controlled by or more than fifty per cent of whose voting stock is directly or indirectly controlled by a defendant.

III

The provisions of this Final Judgment applicable to any defendant shall apply also to each of its subsidiaries, successors and assignees, and to their respective officers, directors, agents, servants and employees, and to all other persons in active concert or participation with such defendant who shall have received actual notice of this Final Judgment by personal service or otherwise. Each defendant is ordered and directed to take such steps as are reasonably appropriate to procure compliance by its subsidiaries, officers, directors, agents, servants and employees with the terms of this Final Judgment. Any person acquiring *stock or* assets pursuant to Section VIII shall not be considered a successor *or assignee* bound by the terms of this Final Judgment. *This Final Judgment shall not apply to service rendered outside the United States.*

[fol. 234] IV

Defendants are jointly and severally enjoined and restrained from directly or indirectly entering into, adhering to or claiming or maintaining any right under any contract, agreement, understanding, plan or program with any other person *engaged in furnishing service* to:

(A) Eliminate or restrain competition in the furnishing of service;

(B) Allocate or divide territories, markets, fields or customers in the furnishing of service;

(C) Fix or maintain charges, methods of charging or any terms or conditions for the furnishing of service to any third person;

(D) Exchange information *not released to the trade generally* concerning charges, method of charging or other terms and conditions of sale at or upon which service is to be furnished to any third person;

(E) Submit noncompetitive or collusive bids or quotations for furnishing service;

(F) Refrain from bidding or quoting on furnishing service;

(G) Hinder, restrict, limit or prevent any person from obtaining service;

(H) Jointly participate in the revenues derived from the installation of equipment or the furnishing of service; or

(I) Restrict or limit the sale of any devices used in the furnishing of service.

Nothing contained herein shall prohibit defendants from entering into otherwise lawful patent, trade secret or technical information agreements.

[fol. 235] V

Defendants are jointly and severally enjoined and restrained from:

[(A) Taking any action having the effect of excluding or foreclosing any person from engaging in furnishing service;]

(B) Discriminating in the furnishing of service by furnishing any service at unreasonably low charges, for the purpose [or with the effect] of destroying competition or eliminating a competitor;

(C) Acquiring, directly or indirectly, the assets, business, good will, any of the corporate stock or any financial or beneficial interest in [(1) any person engaged in furnishing service in any business district or area where any defendant is furnishing or is attempting to furnish service; or (2)] any person engaged in furnishing service [in any other business district or area] except upon establishing to the satisfaction of this Court that such acquisition will not substantially lessen competition or tend to create a monopoly in the furnishing of service in any area of the country or the business district or community involved;

[(D) Furnishing service to any customer in an area where the defendant is the only source of such service at a rate in excess of the annual average of that charged by defendant for the same type of service in all of the cities where there is another source for such service;]

(E) Entering into any contract or agreement for the

furnishing of service *or any renewal thereof whereby the subscriber is obligated to accept service for a period* in excess of one year's duration; *any contract for a period in excess of one year shall give the subscriber the option to terminate on any anniversary date of commencement of service upon payment of any difference between the "full term" contract rate and a specified "short term" rate,* [fol. 236] *making reasonable allowance for the difference in the cost of supplying service on a short term basis.*

[(F) With respect to contracts for the furnishing of services entered into prior to the date of entry of this Final Judgment, failing to notify such customers that they may, without penalty, terminate such contract one year from the initial date thereof or ninety (90) days from the date of notification, whichever is later;]

(G) Enforcing, entering into or claiming any rights under any contract, agreement or understanding that any person will not engage in furnishing service;

(H) Tying or conditioning, by varying rates or otherwise, the furnishing of service at one location to or upon the furnishing of service to the same customer at another location;

(I) Bidding for the furnishing of service to any governmental body or agency thereof, where the defendant has participated in the preparation of the specifications for the job and such specifications are [so drawn as to effectively preclude] *drawn for the purpose of precluding* any person engaged in furnishing service from submitting a responsive bid on that job;

(J) Paying any commission or other renumerations to any agent or representative of any insurance company, or companies engaged in the installation of automatic sprinkler systems, for leads or information as to prospective customers for service;

[(K) Soliciting any contract for the furnishing of service except on a basis whereby the local personnel of ADT solicits customers in the area in which they are stationed, rather than soliciting chain accounts at the headquarters of such accounts.]

The provisions of paragraphs (C), (E) and (J) of this section shall not apply to AFA and Holmes.

[fol. 237] VI

(A) *Any* Agreements under the terms of which Grinnell, ADT, AFA, or Rhode Island Electric Protective Company ("RIEP"), jointly furnish equipment and/or service to subscribers or participate in revenues from service contracts are ordered [cancelled] *terminated* by the parties thereto *from and after a date which shall be as soon as possible consistent with the parties' responsibility to maintain continuity of service to subscribers, and no later than two years from the date hereof, and thereafter neither Grinnell (as to RIEP) nor ADT (as to AFA and RIEP) shall have any interest in revenues derived from subscribers' contracts heretofore obtained or operated by AFA or RIEP. Upon such termination Grinnell and ADT are to divest themselves by sale to RIEP and AFA, respectively, of all of the devices owned by them and installed upon the premises of AFA's and RIEP's subscribers, and are to be compensated for the value of said devices in the amounts specified in the agreements heretofore reached between the parties.*

(B) *Grinnell, ADT and AFA are ordered and directed to terminate the device sale agreements between them dated February 18, 1954 and to commute to a lump sum payment (payable in installments at the option of the parties) the obligations of AFA and ADT to Grinnell arising thereunder.*

[(B)] (C) Defendants are jointly and severally enjoined and restrained from renewing, adhering to or maintaining any contract or agreement cancelled pursuant to subsection (A) above or entering into any like or similar contract or agreement with each other.

VII

[Defendants are each] *ADT is* ordered and directed:

(A) To [assign] *offer* to each service customer *upon entering into any new or renewal service contract* all right, title and interest to equipment installed or to be installed on the premises of the customer, [without further charge as to existing installations and, as to future installations, for such defendants' regular installation charge] *at reason-*

[fol. 238] *able prices, terms and conditions which shall not be substantially more advantageous to ADT than its*

charges, terms and conditions for rendering service when there is no sale;

(B) On request of any person desiring to furnish service *to others* in any area where [the defendant has the only central station] *ADT is the sole source of service,* to permit, on reasonable terms and conditions, signals from the premises of subscribers of such person to be transmitted to the central station of [the defendant] *ADT* and, further, to advise such person promptly of any hazard-indicating signals received from such premises; *provided, however, that no such person shall be entitled to continue to so use the ADT central station for a period in excess of two (2) years;*

(C) On request of any person, to sell upon non-discriminatory terms and conditions any devices manufactured by such defendant for use in furnishing service.

Defendants shall not be required to sell (i) confidential security devices, the effectiveness of which might be compromised by such sale, or (ii) devices made for any agency of the United States Government which will not consent to such sale.

The provisions of paragraphs (C) and (E) of Section V and of paragraphs (A) and (B) of this Section shall remain in effect for a period of ten (10) years from the date of this Final Judgment, at the end of which time they shall terminate unless the Court finds that their continuation is required to preserve or maintain competitive conditions.

VIII

It is an objective of this Section and Final Judgment that competitive conditions be restored or created, and the dominant position of the defendant ADT be curtailed, in the furnishing of service. To this end, defendants ADT and Grinnell shall take such steps as may be necessary to achieve that objective at least to the extent specified in the Appen-[fol. 239] dix A hereto. Defendants ADT and Grinnell shall, *at their option and* as specified in Appendix A either (a) [establish central station corporations] *divest themselves of the stock in a newly formed or existing corporation* in each *such* city, [each of] which *corporation* shall [be

fully equipped and capable of furnishing services] *have service revenues at least* to the extent specified in Appendix A, [and divest new corporations'] *by distributing it to the stockholders of ADT and Grinnell or by selling it* upon the [best] *most profitable and reasonable* terms obtainable to a person not affiliated in any manner with [any defendant] *ADT or Grinnell*, or, (b) sell and transfer upon the [best] *most profitable and reasonable* terms obtainable, to any such person, service contracts in *at least* the amounts specified, *together with equipment.* The types of service contracts so sold or transferred shall be *reasonably* in the same proportion as the types of all service contracts held by ADT in the city involved, or served by the ADT central station in the area where the customers are located, *and shall only be sold or transferred with the written consent of the subscriber, which ADT shall use its best efforts to obtain.* The action and transactions required by this Section shall be completed within six (6) years from the date of entry of this Final Judgment; approximately one-third by the end of the first two years and another one-third by the end of four (4) years.

In a city where any central station corporation must be established, an eligible purchaser shall have the option of acquiring [the corporation without the central station equipment and, if not desired, defendants shall not be required to include that equipment in the assets of the corporation.] *from ADT, on reasonable terms, central station devices, or of using the ADT central station as set forth in Section VII(B) of this Final Judgment.*

Paragraph (E) of Section V and paragraph (A) of Section VII shall not apply in any locality listed in Appendix A until divestiture has been made therein.

At the end of ten (10) years from the date of entry of this Final Judgment, unless [the defendants] *ADT or* [fol. 240] *Grinnell* can show to the satisfaction of this Court that effective competition has been restored or established in the furnishing of service [in each and all of the cities listed in Appendix B hereto and in the United States in general, the Court shall enter such order or orders as it deems necessary requiring the same or similar action to achieve the objective of this Section and this Final Judg-

ment in any or all of the cities listed in Appendix B hereto] *the Court shall enter such order or orders requiring ADT to divest itself of such of its service revenues in excess of 50 percent of total service revenues in the United States as the Court deems necessary to restore or establish effective competition.*

ADT or Grinnell may, at any time, apply to the Court for relief from any provision of this Final Judgment upon a showing of undue hardship or that such provision is unnecessary in the light of changed conditions in any given locality or in the service industry.

or, in the alternative

VIII

It is an objective of this Section and Final Judgment that competitive conditions be restored or created, and the dominant position of the defendant ADT be curtailed, in the furnishing of service. To this end, defendants ADT and Grinnell shall, *within such time as the Court shall require, submit to the Court for its approval a plan to accomplish such divestiture as may be necessary to reduce their service revenues to fifty percent (50%) of total service revenues in the United States. This plan shall provide for divestiture by ADT, within two (2) years of the date hereof, of five percent (5%) of its service revenues as of the date of entry of this Final Judgment, and of an additional five percent (5%) thereof within four (4) years of the date hereof, and for such additional divestiture periodically thereafter as the Court may deem necessary to reduce ADT's service revenues to such fifty percent (50%) as of* [fol. 241] *ten (10) years from the date of entry of this Final Judgment.*

ADT or Grinnell may, at any time, apply to the Court for relief from any provision of this Final Judgment upon a showing of undue hardship or that such provision is unnecessary in the light of changed conditions in any given locality or in the service industry.

IX

Defendant Grinnell is ordered and directed to divest *itself,* within [one] *two* years from the date of entry of this Final Judgment, *unless said time is extended by the Court*

on good cause shown, of all shares of stock of, and any other financial interest in, defendants AFA and Holmes [and within one year from the date of completion of the requirements of Section VIII above with respect to Appendix (A) hereto, all shares of stock of, and any other financial interest in, defendant ADT]. Such divestiture shall be *to Grinnell's stockholders, or* to a person or persons in which defendant Grinnell does not have any financial interest, or a person or persons not otherwise affiliated with any defendant.

Defendant AFA is ordered and directed to divest itself, within two (2) years from the date of entry of this Final Judgment, unless said time is extended by the Court on good cause shown, of all shares of stock of, and any other financial interest in, defendant Grinnell, by distributing said shares or other interests to its stockholders, or otherwise.

X

For the purpose of securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant, made to its principal office, be permitted, subject to any legally recognized privilege:

[fol. 242] (A) Access during the office hours of said defendants, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant, relating to any matters contained in this Final Judgment; and

(B) Subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers and employees of such defendant, who may have counsel present, regarding any such matters.

Upon such written request, the defendant shall submit reports in writing in respect to any such matters as may from time to time be reasonably necessary to the enforcement of this Final Judgment. No information obtained by the means provided in this Section shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Execu-

tive Branch of the plaintiff, except for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

XI

Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment to apply to the Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification *or termination* of any provision thereof, for the enforcement of compliance therewith, and for punishment of violation thereof.

Dated: —, 1964

——, ——, United States District Judge.

[fol. 243] Appendix A

[In lieu of Government's Appendices A and B]

Defendants ADT and Grinnell shall either divest a central station corporation having service contracts yielding at least $125,000 service charges annually, or sell and transfer service contracts and equipment yielding at least $125,000 service charges annually, in each of the following localities:

1. Atlanta, Georgia
2. Buffalo, New York
3. Columbus, Ohio
4. Hartford, Connecticut
5. Louisville, Kentucky
6. Memphis, Tennessee
7. New Orleans, Louisiana
8. Oakland, California
9. Omaha, Nebraska
10. Rochester, New York
11. Springfield, Massachusetts
12. Syracuse, New York
13. Toledo, Ohio

[fols. 244-250] IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

Civil Action No. 2785

UNITED STATES OF AMERICA, Plaintiff,

v.

GRINNELL CORPORATION, AMERICAN DISTRICT TELEGRAPH COMPANY, HOLMES ELECTRIC PROTECTIVE COMPANY and AUTOMATIC FIRE ALARM COMPANY OF DELAWARE, Defendants.

GRINNELL CORPORATION'S BRIEF ON RELIEF—April 6, 1964

Roger T. Clapp, Attorney for Grinnell Corporation.
Cahill, Gordon, Reindel & Ohl, Of Counsel.

[fol. 251] IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

Civil Action No. 2785

UNITED STATES OF AMERICA, Plaintiff,

v.

GRINNELL CORPORATION, AMERICAN DISTRICT TELEGRAPH COMPANY, HOLMES ELECTRIC PROTECTIVE COMPANY and AUTOMATIC FIRE ALARM COMPANY OF DELAWARE, Defendants.

GRINNELL CORPORATION'S BRIEF ON RELIEF

Statement

Pursuant to this Court's order of December 18, 1963, this brief presents Grinnell's* views on the relief which would be appropriate if plaintiff were to prevail on the question of liability. For purposes of this discussion we

* Defendants are referred to herein as "Grinnell", "ADT", "Holmes" and "AFA" respectively.

will assume that plaintiff can establish liability under Sections 1 and 2 of the Sherman Act. However, we do so only *arguendo,* and our silence on matters bearing on liability raised by plaintiff should not be taken as in any way an admission by Grinnell of the validity of plaintiff's arguments.

[fol. 252] Part I

The Facts Do Not Warrant the Excessive Relief Demanded in the Government's Proposed Decree

Rather than disputing the facts upon which the Government relies to establish liability, this memorandum will first outline briefly certain further facts—which we believe the Government will not dispute—bearing on the question of relief.

1. Grinnell Holds Its Stock as an Investment; There Is No Vertical Integration Between Grinnell and the Alarm Companies.

ADT, Holmes and AFA (hereinafter referred to as "the alarm companies") are operating companies engaged in providing central station and other electric protection services. Grinnell is not. Grinnell is a manufacturer and seller of plumbing, heating and miscellaneous foundry products. Among other things it manufactures and installs automatic sprinkler systems.*

As a manufacturer, Grinnell's only operating connection with central station protection services is the fact that a Grinnell sprinkler system (like any other) may be connected to an ADT central station sprinkler supervisory or waterflow alarm system (just as it may be connected to a non-ADT system). When the Grinnell sprinkler is connected to an ADT central station, ADT will ask Grinnell (just as it would ask any other sprinkler manufacturer) or its local agency to install the actuating devices into the sprinkler system. There is not even this remote relationship between Grinnell and central station burglary protection systems or industrial supervision systems.

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* Gross revenues from the manufacture and installation of automatic sprinkler systems accounted for 17.3% of Grinnell's total gross revenues in 1962.

[fol. 253] Grinnell's ownership of ADT, Holmes or AFA stock does not, therefore, result in vertical integration in the sense in which that term is used when a steel producer purchases an iron mine or any business acquires a source of raw material or an outlet, and the Government claims no such relationship.

Grinnell does not itself engage in central station operations.* On the contrary, it holds its Holmes, AFA and ADT stock as an investment in an industry quite different from Grinnell's main line of endeavor. It was precisely because sales of Grinnell products are dependent upon the health of the construction industry, which in turn is extremely sensitive to the fluctuations of the business cycle, that Grinnell's management decided to invest in the central station business as a relatively depression-proof, stable source of income.

As controlling stockholder, Grinnell is, of course, represented on the boards of directors of the alarm companies, but these companies have their own officers and operating personnel. Grinnell does not dictate their policies or make operating decisions for them, and it has nothing whatever to do with their day-to-day operations. The alarm companies have entirely separate managements, with headquarters far removed from Grinnell's headquarters in Providence, Rhode Island, and as as autonomous as subsidiaries can be.

2. The Government's Claims Are Not Generally Applicable to Grinnell.

Defendants are charged with having conspired and attempted to monopolize, and having actually monopolized interstate trade and commerce in central station services in violation of Sections 1 and 2 of the Sherman Act (Complaint, ¶ 25). Plaintiff claims defendants agreed to allocate [fol. 254] markets and restrict competition among themselves both geographically and by type of service, and

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* Grinnell has, in the past, offered commissions to its salesmen when they successfully recommended ADT sprinkler supervisory service to a sprinkler customer. However, this practice was singularly ineffective in generating new ADT contracts and Grinnell has since dropped it.

agreed to a program of acquiring competing central station business (Complaint, ¶¶ 20, 26). Defendants are also charged with certain predatory practices such as threatening or persuading competitors not to compete, price wars and discriminatory pricing (¶ 27), all with the effect of unreasonably restraining and monopolizing commerce to the detriment of defendants' subscribers (¶ 28).

With respect to these charges it should be noted at the outset that the Government's case against Grinnell, Holmes and AFA begins and ends with the now terminated 1906-1907 Burglar Alarm and Fire Alarm agreements and the December 29, 1952 termination agreement (GX 89, 90).

The Government Trial Brief does not charge Grinnell with "a continuing policy of acquiring . . . competitors . . . [with] . . . the sole intent and purpose of . . . the suppression of competition" (Government Trial Brief, pp. 31-32), but only the "Grinnell-controlled companies" (*Id.* at p. 31). The Government moreover admits that AFA has not made a single acquisition and that Holmes has made only three, and none after 1928 (*Id.* at p. 41). ADT has only acquired one American company since the Government cleared its acquisition of General Alarm Corporation in 1955 (*Id.* at p. 40).

In its allegations of predatory practices, such as threatening competitors (*Id.* at pp. 86, 159), discriminatory pricing (*Id.* at pp. 107, 168), preempting markets (*Id.* at p. 159) and using nationwide negotiations to stifle local competition (*Id.* at p. 164), the Government Trial Brief not only makes no specific charges against defendants Grinnell, AFA and Holmes, it barely mentions them.

The absence of any showing of an anti-competitive or predatory course of conduct by these defendants should, of course, mitigate the relief the Government may be entitled to. *United States* v. *W. T. Grant Co.*, 345 U. S. 629, 633 (1953).

The only serious connection charged between Grinnell and the alleged conspiracy and attempt to monopolize is (1) Grinnell's participation in the 1906-1907 agreements, [fol. 255] which have been terminated, and whose residual entanglements defendants propose to liquidate completely, and (2) Grinnell's acquisition of stock in the alarm company defendants, which the Government reviewed without objection in 1953.

3. Grinnell and the 1906-1907 Agreements.

The heart of the Government's case against the defendants rests on the so-called Burgler Alarm Agreement of 1906 and the so-called Fire Alarm Agreement (by which the Government actually refers to several different contracts) of 1907. These early agreements are the only evidence offered by the Government to show that Grinnell agreed to allocate markets and restrict competition.

(a) The 1906 Burglar Alarm Agreement.

The ADT-Holmes agreement dated September 28, 1906 (GX 61, referred to here as the Burglar Alarm Agreement) need not long detain us. Grinnell was never a party to it and the Government does not claim that it was. The Burglar Alarm Agreement and all amendments thereto were formally cancelled on March 27, 1947,* and were no longer in effect when Grinnell acquired Holmes from the New York Telephone Company in 1950. There is nothing in any of the documents or depositions designated by the Government that indicates that Grinnell was even aware that the Burglar Alarm Agreement ever existed.

(b) The 1907 Fire Alarm Agreements.

Recitals contained in the Fire Alarm Agreements and the public records of the time support the following facts, and we do not expect the Government to seriously dispute them (Government Trial Brief, pp. 54, 63).

During the last half of the 19th century and the first few years of the 20th, the United States suffered frightful [fol. 256] fire losses.* Automatic sprinkler systems began to appear in the 1880's and had great success.** Nonetheless, there was a persistent volume of fire loss even on

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* Letter from H. C. Ward, president of Holmes, to E. A. Ward, president of ADT, dated March 26, 1947; letter from E. A. Ward, president of ADT, to H. C. Ward, president of Holmes, dated March 27, 1947.

* In 1907, the fire loss represented 50% of the total value of new buildings for the year. *Pioneers of Progress*, National Board of Fire Underwriters, App. IV, p. 126 (1941).

** Freitag, *Fire Prevention and Fire Protection*, pp. 895-96 (2d Rev. Ed. 1921).

sprinklered premises due to sprinkler failures, the primary causes of which were human: incomplete or inadequate installations, inspections, maintenance or service.*** To overcome these failures, it became necessary to develop sprinkler supervisory and alarm systems designed to report defects which would render the sprinkler system inoperable.† Various alarm valves were developed, including the early Grinnell Angle Alarm in 1885. As late as 1911, however, only Grinnell alarm valves had significant field experience and their performance, as Underwriters' Laboratories stated, depended upon their being "properly installed, correctly adjusted and intelligently supervised".‡ Even as late as 1914, one expert complained of the number of false alarms reported by sprinkler alarms, which, he noted, was primarily "due to defective installations". Gorham Dana, *Automatic Sprinkler Protection*, pp. 143-44 (1914).

ADT was formed by the Western Union Company in 1901 from a group of companies organized to supply messenger service, principally to Western Union, but also to subscribers who had telegraphic signal devices (or "call boxes") in their homes or business. Thirty-nine of ADT's present 46 subsidiaries were incorporated prior to 1907. In each locality it served, ADT had a centralized office (called a "central station") for receiving signals and dis-[fol. 257] patching messengers. With the advent of the telephone, the use of messenger service became restricted to Western Union telegrams and to subscribers who used their call boxes to signal fire or other alarms or to supervise night watchmen.

Since it was already in the alarm business, it was natural for ADT to wish to connect its central stations to sprinkler supervisory and waterflow alarm systems. The

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*** Boston Manufacturers' Mutual Fire Insurance Co., *Special Report No. 19*, p. 2 (1884).

† Crosby, "Eliminating the Conflagration Hazard", *Journal of New England Water Works Association*, Vol. XV, No. 2, p. 102 (December, 1900); see also Crosby & Fiske, *N. F. P. A. Handbook*, Second Ed., p. 106 (1901).

‡ *N. F. P. A. Quarterly*, Vol. 1, No. 3, p. 117 (January, 1908).

crucial factor, however, was the development of a reliable valve to actuate a signal to the central station in case of trouble, and competent installation of such a valve.

In a 1903 agreement (GX 78), ADT acquired patent and other rights in alarm devices belonging to an inventor named Robert L. McElroy. McElroy agreed to solicit central station sprinkler supervisory and waterflow alarm contracts on behalf of ADT and to supply his patented devices to ADT for installation on the subscriber's premises. For its part, ADT agreed to install the devices and service the subscriber contracts. Subscriber revenues were to be divided 45% to McElroy and 55% to ADT, which indicates the importance ADT placed on developing reliable actuating devices.

In 1905, McElroy formed Automatic Fire Protection Company ("AFP"), which succeeded to his rights and obligations under the ADT contract. From the outset, ADT and AFP experienced technical difficulties in obtaining reliable results from their actuating devices.

Similar difficulties were being faced by the predecessor companies of AFA, which had been in the fire alarm business in Chicago and four eastern cities since prior to 1900, and both groups were in need of financing. Grinnell was, at that time, the acknowledged leader of the sprinkler industry. Its equipment was the industry standard;* it had a high level of technical competence, particularly in the field of hydraulics, and it had financial strength.

In short, Grinnell was strongest precisely at this point where the alarm companies desperately needed help, and a joint enterprise of some kind was almost inevitable.

[fol. 258] The Fire Alarm Agreements of 1907 followed. Under the three-party 1907 agreement between ADT, AFP and Grinnell (GX 80), ADT and AFP's relationship continued much as before. By an amendment to the 1903 ADT-AFP (McElroy) agreement, Grinnell was brought into the picture to do the following, at no cost to the other two parties: Grinnell was to (1) arrange for the manufacture of reliable actuating devices; (2) properly install these

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* "The Grinnell head soon became the standard sprinkler of the country * * *." Dana, *Automatic Sprinkler Protection, supra*, p. 40.

devices on automatic sprinkler systems on the subscriber's premises ready for connection to wires from a central station; (3) see to it that its actuating devices at all times complied with the requirements of the insurance underwriters; and (4) contribute $85,000 to the working capital of AFP to insure its financial strength. In return, Grinnell was to receive 25% (AFP and ADT being reduced to 25% and 50%, respectively) of the gross revenues of contracts entered into pursuant to the agreement.

The ADT-AFP enterprise had one other problem: they were threatened with patent conflicts in both the sprinkler supervisory and automatic fire alarm fields from the AFA companies. They resolved the patent conflicts with AFA (then the three Automatic Fire Alarm companies) in the six-party 1907 Fire Alarm agreements. As part of the settlement, AFP assigned all of its rights in the three-party 1907 Fire Alarm agreement to AFA, but only with respect to four of the cities in which the AFA companies were doing business, to wit: New York, Boston and Charlestown, Massachusetts, and Philadelphia, Pennsylvania. Grinnell also contributed $35,000 to the working capital of AFA (Doc. Nos. B00102-104).

Under both of these 1907 agreements Grinnell's sole function was to contribute to the financial strength of AFA and AFP, to supply reliable actuating devices which met the underwriters' requirements, and to properly install and maintain them. In return Grinnell was to receive 25% of the resulting subscriber revenues.

The Government views the 1907 agreements as agreements by a "potential competitor" of ADT (Government [fol. 259] Brief, p. 14) not to engage in the central station protection business" (*Id.* pp. 15, 24). There is no such language in the agreements; nor is there anything in the evidence to indicate that Grinnell was so restrained. Indeed, the Government's theory is contradicted by Grinnell's acquisition of AFA in 1949 and Holmes in 1950. ADT expressly stated to Grinnell in 1951 that Grinnell "did not owe ADT any explanation" in connection with Grinnell's acquisition of central station businesses (GX 85).

There is nothing in any of the documents or depositions designated by the Government to indicate that any of the parties to the 1907 agreement doubted its legality until

ADT's attorneys raised the point, during the course of the termination negotiations in 1951, that it might be considered an "exclusive dealing" arrangement in violation of Section 3 of the Clayton Act. Certainly the parties did nothing to conceal the agreement or to disguise the fact that they were operating under it. They so operated for 47 years (1907-1954) without a word—other than ADT's arguments in 1951—from either the Government or any third party that anything was amiss.*

Under then existing doctrines of interstate commerce the parties were, moreover, justified in believing the 1906 and 1907 agreements to be perfectly legal. *E.g., Federal Baseball Club of Baltimore* v. *National League of Professional Baseball Clubs*, 259 U.S. 200, 208-09 (1922); *Hopkins* v. *United States*, 171 U.S. 578, 591 (1898), which held a combination "in regard to the amount to be charged for [fol. 260] such service [local sales service] is not . . ." a combination in restraint of interstate commerce.

It should also be noted that both the three- and six-party 1907 Fire Alarm agreements involved the pooling of know-how and the cross-licensing of patents so that the patents, trade-secrets and know-how of the parties were contributed to a pioneering new joint venture for the perfection of central station sprinkler supervisory and waterflow alarm systems. This was unquestionably a valid arrangement under the case law of the period. *United States* v. *Winslow*, 227 U. S. 202, 217 (1913); *Bement* v. *National Harrow Co.*, 186 U. S. 70, 91 (1902).

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* When ADT's attorneys questioned the legality of the 1907 agreements under the antitrust laws during the course of the 1951 termination negotiations, Grinnell's attorney (Mr. DeWitt) was so certain of their validity that he offered to submit them to the Department of Justice for a ruling (GX 85, quoted at pp. 62-63 of the Government Trial Brief). The agreements were in fact submitted to the Department in 1953 and again in 1955. The Government gave Grinnell no reason to suppose that Grinnell had been misled by Mr. DeWitt. If these old agreements were too innocuous for action in 1953, when they still had a few months to run, they are all the less significant now, ten years after their expiration.

"It was at one time largely understood that the Supreme Court substantially held that all combinations of patents were outside the Sherman Antitrust Act.

* * * * * * *

"This impression was apparently strengthened by expressions in United States v. Winslow, . . ." *United States* v. *United Shoe Machinery Co. of N. J.*, 222 Fed. 349, 354, 355 (D. Mass. 1915), *aff'd*, 247 U. S. 32, 38 S. Ct. 473 (1918).

See also, *United States* v. *E. I. duPont deNemours & Co.*, 118 F. Supp. 41, 219-220 (D. Del. 1953), *aff'd*, 351 U. S. 377 (1956).

(c) Termination of the 1907 Agreements.

The 1907 Fire Alarm Agreements expired by their terms on February 18, 1954. By 1952 defendants had reached the conclusion that these agreements should be terminated and not renewed. However, after decades of operation under these agreements, the rights and obligations of the parties, particularly with respect to the equipment installed upon subscribers' premises, had become interwoven in a manner which did not permit any simple adjustment. (See Government Trial Brief, pp. 61-75).

[fol. 261] After years of negotiations ADT and Grinnell signed the December 29, 1952 termination agreement (entered into prior to Grinnell's acquisition of ADT stock in 1953) under which Grinnell sold Grinnell devices which were installed on ADT subscribers' premises to ADT. The purchase price was 17.5% (later reduced to 17.2%) of the annual revenues derived from the sprinkler supervisory and waterflow alarm contracts of those subscribers in whose premises the devices were installed as of the contract termination date, February 18, 1954, at the rates in effect on that date (GX 89, 90). Grinnell at the same time sold its installed devices to AFA under a similar agreement. Grinnell therefore receives no payments measured by revenues from new contracts entered into since February 18, 1954.

For reasons which entirely escape us, the Government contends that these device sales agreements, and any other agreement which uses a percentage of subscriber revenues

as a measure of value, must be cancelled. Although we see no merit whatever in this contention (particularly if the other relief provided for in defendants' proposed decree were to be imposed), if the Court wishes it Grinnell, AFA and ADT will agree to commute Grinnell's terminal rights under this agreement to a lump-sum payment, payable in specified annual installments.

After the expiration date of the 1907 six-party agreement, ADT and AFA continued to argue their respective terminal rights, but without agreement. Their situation is complicated by the fact that both are operating alarm companies having divided responsibilities to the same subscribers, and there are enormous difficulties in equitably separating their joint contributions into separate independent operations.

ADT and AFA have now tentatively agreed, subject to the approval of the Court, to adjust their rights by having ADT sell to AFA all equipment installed on subscribers' premises. This would result in divesting ADT of virtually all of its sprinkler supervisory and waterflow alarm business in New York, Philadelphia and the Boston-Charlestown area.

[fol. 262] Finally, Grinnell and ADT have now tentatively agreed, again subject to the approval of this Court, to negotiate with Rhode Island Electric Protective Company ("RIEP") for a termination of the March 29, 1954 RIEP agreement (GX 128) and a sale to RIEP of all equipment installed in subscribers' premises pursuant to the agreement in return for lump-sum payments to Grinnell and ADT.

Provision for termination of each of these agreements and the elimination of their last vestiges as outlined above is included in Section VI of "Defendants' Proposed Changes in Plaintiff's Proposed Form of Judgment" (hereinafter "Defendants' Proposed Decree") submitted herewith.

4. The Inaction Of The Government in 1953 and 1955 Demonstrates The Absence Of Any Serious Anti-Competitive Threat Requiring Drastic Relief.

Grinnell's sales are largely dependent on conditions in the construction industry. As these conditions vary sharply with general business conditions, Grinnell's sales revenues tend to contract substantially in periods of recession. (For example, Grinnell omitted dividends for a number of years during the 1930's.) Because of these fluctuations in its own earnings and the relatively stable demand for central station services, with which Grinnell had some familiarity, Grinnell in 1949 and 1950 acquired controlling stock interests in AFA and Holmes.

In 1953 a broker from the Chicago firm of Apple-Cole called Mr. Fleming, Grinnell's president, and told him of Western Union's interest in selling its controlling stock in ADT. Grinnell thereafter undertook negotiations with Western Union and reached agreement on terms of purchase. On July 2, 1953, after this agreement was announced, but before it was consummated, a letter of inquiry was received from the Antitrust Division of the Department of Justice. The letter stated that the transaction had come to the attention of the Department and requested that certain information be supplied.

[fol. 263] Following the receipt of the Department's letter Grinnell decided not to go forward with the transaction if the Department found it inconsistent with the law.* Counsel for ADT and Grinnell promptly complied with the Department's request and submitted materials giving, *inter alia*,

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* Letter dated July 2, 1953 from Roger T. Clapp, Secretary and Counsel, Grinnell Corporation, to William D. Gaillard, Counsel for Western Union requesting "an extension for the completion of this purchase until the matters raised by this letter [from the Department of Justice] are cleared up." (Doc. No. A00457); letter dated July 2, 1953 from R. T. Clapp to Millard J. Bloomer, Counsel for The Equitable Life Assurance Society of the United States, who financed the purchase (Doc. No. A00460); agreement dated July 9, 1953 extending the closing date on the purchase (Doc. No. A00305-306); letter dated July 8, 1953 from W. D. Gaillard to R. T. Clapp (Doc. No. A00302).

information as to the nature of the business of Grinnell and ADT, the competitive situation generally and in those areas served by Holmes and AFA, copies of the 1907 three-party and six-party Fire Alarm Agreements, statements concerning outstanding supply and other arrangements between ADT and Grinnell, and balance sheets and profit and loss statements.

Thereafter counsel received a letter of thanks for their cooperation.** In accordance with their understanding of the custom in such cases, the parties concluded that the Government, while not taking a formal position as to the legality of the acquisition, had satisfied itself on the subject (Government's Answers to Defendants' Interrogatories Numbered 134, 137-45, 157). The transaction was accordingly consummated.

In 1954 ADT was approached by a banker who advised that stockholders of General Alarm Corporation, a local protection service company in Boston, wished to dispose of the assets of its business. The banker asked if ADT wished to negotiate for their purchase. ADT indicated interest, and agreement was reached in 1955, subject to the approval of counsel.

[fol. 264] Counsel, on reviewing the agreement, decided to submit it to the Justice Department for advance approval under the merger clearance program and did so on March 18, 1955. After consideration, the Department advised that in its view the proposed acquisition might be unlawful and the requested clearance was refused.

Further discussion, however, induced the Department to change its position. Additional information offered by counsel was taken into consideration and certain changes were made in the contemplated transaction. The Department then granted clearance, stating that it did not "presently intend to take action with respect to the proposed acquisition",* and the transaction was consummated.

** Letter dated July 23, 1953 from Hon. Stanley N. Barnes, then assistant attorney general in charge of the Antitrust Division, to Frank A. Fritz.

* Letter dated July 14, 1955 from Hon Stanley N. Barnes, then assistant attorney general in charge of the Antitrust Division, to Frank A. Fritz.

The facts submitted at the time were voluminous and included information concerning Grinnell's stock ownership in ADT, Holmes and AFA, the sales and customers of ADT and General Alarm Corporation, names of operators and suppliers of competing services, and the estimated revenues thereof, financial statements, equipment lists, outstanding agreements between Grinnell, ADT and AFA, and descriptions of various types of protective service, including, *inter alia*, local alarm, direct-connected and central station protection service (Government's Answers to Defendants' Interrogatories Numbered 136, 146-55, 157, 160).

The Government** in short, must have concluded in 1955 that there was no likelihood of establishing even an "incipient" violation of the law, since Section 7 of the Clayton Act, the statute under which both investigations were made, is designed to reach "incipient" violations as distinguished [fol. 265] from the actual unreasonable restraints of trade and monopolizations made unlawful by the Sherman Act. *United States v. E. I. duPont deNemours & Co.*, 353 U.S. 586, 589 (1957).

The Government waited nearly eight years from the time it first learned of Grinnell's proposed acquisition of ADT to file a complaint demanding that Grinnell divest itself of ADT.

> "[I]t is certainly a matter for consideration that there was no legal attack on the Corporation until 1911, ten years after its formation and the commencement of its career." *United States* v. *U. S. Steel Corp.*, 251 U. S. 417, 452-53 (1920).
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> "The lapse of time, indeed, may not condone the offense if offense there was. It however, may call offense in question and be an element in the refutation of accusations long deferred, or determine against

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** The following 12 Department of Justice Attorneys participated in the 1953 or the 1955 investigations: Honorable Stanley N. Barnes, Bernard Wehrmann, Donald F. Melchoir, John T. Duffner, Edward P. Hodges, Ephraim Jacobs, Gerald J. McCarthy, Edward M. Feeney, Alfred M. Agress, Francis J. Heazel, William McPike and William H. McManus. (Government's Answers to Defendants' Interrogatories Numbered 137, 146).

particular remedies. It is to be remembered that a dissolution of the offending companies as prayed . . ." *United States* v. *United Shoe Mach. Co. of N. J.*, 247 U. S. 32, 45-46, 38 S. Ct. 473, 478 (1918).

5. Plaintiff as a Petitioner In Equity.

Equity actions by the Government are subject to the same equitable principles that govern actions between private parties. *Hecht Co.* v. *Bowles*, 321 U. S. 321, 329 (1944). "The fact that the suit is brought under the Sherman Act does not change the principles which govern the granting of equitable relief." *Appalachian Coals, Inc.* v. *United States*, 288 U. S. 344, 377 (1933); see also, *United States* v. *United States Steel Corp.*, 251 U. S. 417, 452 (1920).

Applying these equitable principles, it is difficult to see how the Government, as a petitioner in equity, can be heard to demand that Grinnell be required to dispose of assets, by forced sale, which Grinnell would never have acquired had the Government disapproved the acquisition, and which it in fact acquired in reliance upon the Government's acquiescence. It is almost as difficult to comprehend how the Government can, in good conscience, demand immedi- [fol. 266] ate injunctive relief, regardless of hardship, with respect to practices of which the Government has long been aware.*

United States v. *United Shoe Mach. Corp.*, 110 F. Supp. 295, 348 (D. Mass. 1953), *affirmed per curium*, 347 U. S. 521 (1954), clearly indicated that restraint in shaping an antitrust decree is particularly appropriate where a defendant has been led to believe that his conduct was lawful:

"Such self-restraining considerations have peculiar force in this case. Until Alcoa lost its case in

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* See *United States* v. *General Electric Co.*, 15 F. 2d 717, 719 (N. D. Ohio 1925), *aff'd*, 272 U. S. 476 (1926); *United States* v. *Electrical Apparatus Export Association*, Civil Action No. 33275 (S. D. N. Y.), (unpublished opinion of Judge Conger dated August 30, 1946 denying Government motion to strike affirmative defenses); *cf. Fosburgh* v. *California & Hawaiian Sugar Refining Co.*, 291 Fed. 29, 35-36 (9th Cir. 1923).

1945, there was no significant reason to suppose that United's conduct violated §2 of the Sherman Act." 110 F. Supp. at 348.

Finally, in a suit where the Government seeks the drastic remedy of dissolution it must be remembered that

> "[T]he moving party must satisfy the court that relief is needed. The necessary determination is that there exists some cognizable danger of recurrent violation . . ." *United States* v. *W. T. Grant Co.*, 345 U. S. 629, 633 (1953).

See also, *United States* v. *U. S. Steel Corp.*, 251 U. S. 417, 445 (1920).

6. Principles Governing the Formulation of Civil Decrees.

The principles governing the formulation of civil decrees are well defined, however difficult they may be in application.

The overriding principle is that the provisions of a civil decree should not be punitive, *Hartford-Empire Co.* v. *United States*, 323 U. S. 386, 409 (1945), but should be [fol. 267] designed solely to "pry open * * * competition", *International Salt Co.* v. *United States*, 332 U. S. 392, 401 (1947). It therefore follows that the injunctive provisions of the decree should "not impose unnecessary restrictions", *Lorain Journal Co.* v. *United States*, 342 U. S. 143, 156 (1951), or so trammel defendants' actions as to place them "in a different class than other people", *Hartford-Empire Co.* v. *United States, supra*, at p. 410.

The Supreme Court succinctly stated the applicable principles of law in *Hartford-Empire:*

> ". . . [W]e may not impose penalties in the guise of preventing future violations. This is not to say that a decree need deal only with the exact type of acts found to have been committed or that the court should not, in framing its decree, resolve all doubts in favor of the Government, or may not prohibit acts which in another setting would be unobjectionable. But, even so, the court may not create, as to the defendants, new duties, prescription of which is the function

of Congress, or place the defendants, for the future, 'in a different class than other people,' as the Government has suggested. The decree must not be 'so vague as to put the whole conduct of the defendant's business at the peril of a summons for contempt'; enjoin 'all possible breaches of the law'; or cause the defendants hereafter not 'to be under the protection of the law of the land.' " (*Id.* at pp. 409-10)

[fol. 268] Part II

Specific Relief Provisions

Before entering upon a detailed analysis of the proposed decrees, it should be pointed out that defendants would be willing to accept the substance of most of the Government's proposals, even where defendants have proposed modifications in form. There are only two principal areas of difference between the two proposed decrees:

1. The Government, far exceeding the demands of its complaint, and without any showing of need therefor, demands that Grinnell divest itself of its entire interest in all three alarm companies, and that ADT be atomized by divestiture wherever the Government believes it to be feasible. Grinnell's proposed decree would divest it of Holmes and AFA, and also provide for substantial local divestiture by ADT in designated cities. Grinnell, moreover, proposes that the survival of Holmes and AFA and the vigor of their competition with ADT be assured by freeing them of the decree's major operating restrictions.

2. The Government insists that defendants be required to transfer title in installed equipment to their subscribers without compensation, and that defendants be prohibited from entering into service contracts in excess of one year's duration. Defendants offer to give subscribers the option to buy equipment and the option of cancelling their contracts on any anniversary date thereof upon payment of fair compensation.

1. The Divestiture Proposed by Defendants' Decree Meets Every Legitimate Public Interest.

Assuming liability can be established, the difference between the parties is not *whether* there is to be divestiture but the *extent* of divestiture necessary to achieve healthy competitive conditions.

[fol. 269] Under defendants' proposed decree, Grinnell would divest itself, by distribution to its stockholders or otherwise, of all of its interest in AFA and Holmes.* In 1961, those two companies accounted for 14.61% of total service revenues in the United States. (Stipulation No. 5, Appendix A, Table 1; Defendants' Proposed Decree, §IX.) In addition, as a result of Section VI of defendants' proposed decree, AFA will become the sole operator of all the ADT-AFA contracts in the Boston, New York and Philadelphia areas, so that ADT will have shorn itself of virtually all of its sprinkler supervisory and waterflow alarm revenues in three of the richest metropolitan areas in the country. The net effect of these two provisions alone would be to reduce the service revenues of Grinnell-controlled companies by approximately 20% of their share of total United States service revenues by approximately 17%,** and to have the remaining Grinnell-controlled company, ADT, face powerful competition from both AFA and Holmes.

Moreover, defendants further agree with the Government that, if it were to prevail some further divestiture of ADT would be appropriate—*i.e.*, we agree that, in certain cities which can support two or more central stations but where ADT now provides the only central station service, an effort should be made to establish a healthy competitor. (*Id.* at §VIII).

Finally, defendants are willing to agree that, unless sufficiently healthy competitive conditions then exist, ADT's share of service revenues in the United States may be cut to 50% by the end of the 10-year period following entry

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* To complete this divorcement, under defendants' proposed decree, AFA would be divested of its 9% interest in Grinnell.

** Using 1961 revenues, see Stipulation No. 5, Appendix A, Table 1, p. 1.

of a Final Judgment herein. Whether this is done by using the Government's plan for divestiture (with modifications as required to make such divestiture economically feasible) or by an alternate plan to be submitted by defendants, an immediate increase in competition would be assured, and ultimate vigorous competition would be guaranteed.

[fol. 270] With competition already present in most major cities, with AFA and Holmes presenting substantial competition in New York, Boston and Charlestown, Pittsburgh and Philadelphia, with ADT's share of national revenues declining in any event (See Stipulation No. 5, Appendix A, Table I) and with new central station competitors appearing every year (See Stipulation No. 7) defendants' proposal fully meets legitimate competitive requirements.

This raises the first major difference on the question of divestiture: has the Government made any showing that under these circumstances Grinnell's ownership of ADT stock poses any anti-competitive threat? "Separation is not an end in itself; it is a means to provide an open market * * *." *United States* v. *Pullman Co.*, 53 F. Supp. 908 (E. D. Pa. 1944), *affirmed by an evenly divided court*, 330 U. S. 806 (1947). Nothing in the Government's Trial Brief or in any designated document or deposition evidences that such ownership poses any anti-competitive threat or that Grinnell acquired ADT (or for that matter, Holmes and AFA) "in violation of the law", *United States* v. *National Lead Co.*, 332 U. S. 319, 352 (1947).

When courts examine vertical integration under the Sherman Act, the question is always the impact upon competition: If a customer is acquired, to what extent are competitors foreclosed; if a supplier is acquired, to what extent are other suppliers foreclosed? If foreclosure is insignificant or non-existent, the Sherman Act does not bar vertical integration. *United States* v. *Columbia Steel Co.*, 334 U. S. 495 (1948); *United States* v. *Aluminum Co. of America*, 91 F. Supp. 333, 345 (S. D. N. Y. 1950). There is simply nothing like even this kind of vertical integration between Grinnell and the central station companies.

The essential thoughtlessness of the Government's proposal that Grinnell divest itself of ADT as well as Holmes and AFA is demonstrated by the fact that, after arguing

vigorously that the Grinnell participation in the 1907 Fire Alarm agreements was illegal because they allegedly kept Grinnell out of the central station business (Government Brief, pp. 15, 24), the Government's Proposed Decree seeks [fol. 271] to achieve precisely the same result. It seeks to divest Grinnell of its entire investment in the central station business (§IX) while permanently enjoining Grinnell from reentering that business (§V(C)).* In short, the Government would require Grinnell, by way of relief, to refrain from competing in the central station business, and bases that demand for relief on allegations that Grinnell has refrained from competing in the central station business.

Under defendants' proposal, AFA and Holmes, particularly if they are freed of the restrictive injunctions of the Final Judgment, will face a reduced ADT as vigorous, independent, multi-city competitors. In the light of these facts the Government cannot justify a decree requiring Grinnell to dispose of its ADT stock.

> "* * * divestiture is a remedy to restore competition and not to punish those who restrain trade, it is not to be used indiscriminately, without regard to the type of violation or whether other effective methods, less harsh, are available." *Timken Roller Bearing Co.* v. *United States*, 341 U. S. 593, 603 (1951)

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* Somewhat inconsistently, the Government's Proposed Decree then provides that, having been divested of its central station business, Grinnell can acquire new central station business upon satisfying this Court:

> "* * * that such acquisition will not substantially lessen competition or tend to create a monopoly in the furnishing of service in any area of the country or the business district or community involved; * * *." (Government's Proposed Decree, §V(C)(2)).

In other words, Grinnell can't keep any central station stock, but must sell it at a forced sale and pay taxes on the sale; it may then buy such stock, but only after obtaining approval.

See also, *United States* v. *Aluminum Co. of America*, 91 F. Supp. 333, 416-18 (S. D. N. Y. 1950), *modification denied*, 153 F. Supp. 132 (S. D. N. Y. 1957).

With respect to the mechanics of any divestiture that is required, it is important to note that a "spin off," or dis- [fol. 272] tribution to Grinnell stockholders, should be permitted as one alternative. Grinnell is a publicly-held corporation with over 5,000 stockholders located in every state in the Union and has 1,354,011 shares of stock outstanding. Apart from AFA (whose 9% interest in Grinnell is to be divested pursuant to Section IX of Defendants' Proposed Decree), only one stockholder has a beneficial interest in more than 2% of Grinnell's stock. That stockholder is Pere & Co. (a nominee for Investors Diversified Services, Inc., a mutual fund which, in turn, has thousands of shareholders) with 2.008%. Moreover, Grinnell's shares are actively traded on the national over-the-counter market.

A distribution of the Holmes and AFA stock to Grinnell stockholders, for example, would effectively free Holmes and AFA from Grinnell control and establish them as independent entities. The alternative would seem to be a sale of Grinnell's controlling interest in Holmes and AFA to some third party. That course may cause a forced sale with severe consequences which may be avoided by allowing Grinnell the "spin-off" option.

In either case, as we have already noted, the innocent successors should not be under a competitive handicap by reason of any decree herein.

2. The Local Divestiture Of ADT In The Government's Proposed Decree Is Unworkable.

(a) The Government's proposal.

Section VIII of the Government's Proposed Decree would require ADT to either establish new central station companies having annual service charges of $125,000, or transfer service contracts to existing competitors yielding varying amounts of revenue, in 48 cities listed in Appendix A to the Government's Proposed Decree. The central station companies and the service contracts are to be sold "upon the best terms obtainable" and all of these transactions are to be completed within six years, in two-year

[fol. 273] stages. If, at the end of 10 years, defendants cannot demonstrate to the Court "that effective competition has been restored" in the 59 additional cities listed in Appendix B (*i.e.* almost all of the remaining cities in which ADT does business) and in the United States in general, the Court can order further divestiture in the Appendix B cities. Appendix A seems to include every city in the United States where the Government believes divestiture is presently possible; Appendix B appears to list those places where the Government believes divestiture may be feasible in the future.

(b) The entities resulting from divestiture must be economically healthy.

Any entity resulting from divestiture, whether the newly created company or the surviving remnant of defendants' business, should be a healthy, viable economic unit capable of withstanding and offering vigorous competition; otherwise divestiture results only in economic waste.

The Government briefs argue that the "breakeven" point of a central station is not reached

> "* * * until such time as the central station has acquired subscribers paying approximately $125,000 per year in service charges." (Government Brief, p. 3; Government Trial Brief, p. 9.)

and conclude that a city with a population of less than 150,000 would not ordinarily be able to support a central station. The Government, therefore, concedes that there are "natural monopoly" cities. *American Football League v. National Football League,* 323 F. 2d 124, 130 (4th Cir. 1963). The only question between the parties, then, is when and in what circumstances a city can support more than one central station.

ADT carries on central station services in 112 cities and municipalities, and the Government proposes local divestiture in one form or another in 107 of them. In Appendix A, the Government has listed every city in the United [fol. 274] States in which ADT receives service revenues in excess of $250,000 a year, regardless of whether or not the local operation is profitable, on the simple theory that one $250,000 central station can yield two $125,000 central sta-

tions. All of the cities listed in Appendix B are natural monopoly cities, incapable of supporting divestiture which would result in competition by the Government's own standards: none of them realize $250,000 a year or more in service revenue, and a number of them have operated at a deficit for several years.

Defendants' counter-proposals seek to overcome the following flaws in the Government's proposal which, it is respectfully submitted, no workable decree can safely overlook:

(i) A Break-Even Operation Is Not Viable.

Witnesses called by the Government have testified that the break-even points of central stations vary widely, depending upon conditions (Guibert Dep. pp. 150 *et seq.*), from $150,000 to $200,000 (Schnell Dep. p. 112). ADT's own experience shows wide variations, with losses on revenues in excess of $250,000 a year in some areas.

Conceding that reasonable men may differ on the question of break-even points, it is at least clear that to err on the low side is to create a wholly unnecessary waste of assets and duplication of facilities in areas which cannot support two separate central stations. The Government, moreover, leaves no room for quality or for improvement through investment in research. Obviously a burglary central station providing a one-guard response has a different break-even point than one with a two-guard response.*

Standards for local divestiture should not be set at marginal levels which will only work out if minimum standards of service are set, and research and development work [fol. 275] is abandoned. This is particularly true here, where we are dealing not merely with a potential loss of economic value, but with jeopardizing an industry devoted to the protection of life and property from fire and burglary hazards.

Even assuming that, generally speaking, central stations will break even at $125,000 a year, the break-even point is not the standard of viability—there must be a fair rate of

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* Holmes, for example, has built its reputation for quality on a two-guard response.

profit. A break-even operation may well be unsalable, cannot generate the necessary capital for growth, will have difficulty attracting new capital, and will have no cushion against hard times. In short, the Government's proposals simply will not work if the Government insists on a break-even point as the standard for divestiture.

Nor can the Government properly reduce the surviving ADT company to a break-even point; the removal of profit is, for all practical purposes, a confiscatory destruction of ADT's investment. A decree which "in effect confiscate[s] considerable portions of the * * * [defendants'] * * * property" will not be upheld. *Hartford-Empire Co.* v. *United States,* 323 U. S. 386, 414 (7945).

(ii) The Government Proposals May Result in Radical Curtailment of Central Station Services.

A substantial part of the cost of central station operations is the relatively fixed expense of the basic central station office. Central station offices with a high volume of contracts have a considerably higher rate of profit—even at relatively low charges—than offices with a low volume of contracts. It therefore does not follow that a central station which has annual revenues of $250,000 and profits, say, of $30,000, will result, after divestiture, in two central stations with annual revenues of $125,000 and profits of $15,000 each. The result is more likely to be two central stations operating without profit (because each one has lost the volume which is necessary to real profit) or with profit derived from cutting corners in inspection, maintenance of equipment and the quality of service. Local divestiture [fol. 276] should, therefore, be limited to those cities that can support two comfortably profitable operations.

ADT has deficit central station offices in a number of cities. It operates many of these in the hope they will ultimately become profitable; it continues others to service established accounts, or out of a sense of local responsibility (since no one will provide the service if ADT does not). Far from using monopoly cities to subsidize competitive cities as the Government charges, ADT subsidizes many marginal "monopoly" cities out of revenues from high volume competitive cities.

Even assuming, therefore, that ADT can still make

money if it is left with a minimum in any one city of $125,000 of annual revenue, it will certainly not be able to make the kind of money that will enable it to further subsidize those deficit offices. If the divestiture proposed by the Government in Section VIII were to be decreed, ADT would inevitably be forced to close many of the deficit offices, leaving its customers and the affected communities without central station protection.

(c) Defendants' Proposals on ADT Divestiture.

To sum up, defendants do not quarrel with the transfer of assets or the creation of new companies in cities which can genuinely support two installations and where ADT is now the only central station operation. Defendants, however, strenuously urge upon the Court that it is for the Government to show (1) that the cities selected by it can, in fact, support two stations and that divestiture won't result in two deficit operations, (2) that there is a need for local divestiture in cities like Chicago and New York where substantial competition already exists, and (3) that its divestiture proposal will not disable ADT from carrying on the research and developmental work necessary to keep up with the requirements of its customers and to advance the industry as it has in the past.

Following these principles, ADT has carefully reconstructed and projected revenues in the 48 cities listed by the government in its Appendix A to determine which cities [fol. 277] will, in fact, support profitable new central station competitors. The 13 cities in which profitable survival could be predicted are listed in Appendix A to defendants' proposed decree. The divestiture proposed in these 13 cities, together with the proposed build-up of AFA, should, at a minimum, reduce ADT's share of total United States service revenues to approximately two-thirds within 6 years. It is reasonable to expect, in fact, that ADT's share will be substantially less. Its share is already declining as newcomers enter the business and it will be faced with further attrition from existing and new competitors when ADT's subscribers will be free to cancel their service contracts at the end of any given year.

The Government's Proposed Decree has detailed a community by community divestiture in 48 different cities,

Grinnell and ADT are willing to follow this path and have proposed divestiture in 13 cities.

However, Grinnell and ADT are convinced that (with AFA and Holmes as vigorous competitors, with the natural growth in the market and increasing entry of newcomers, with the restrictive effects on ADT of the injunctive proposals agreed to by defendants) ADT will suffer a radical decline in its share of service revenues in any event. Grinnell and ADT therefore propose, as an alternative to the foregoing plan, that they submit to this Court a plan of proposed divestiture by ADT which will be consistent with the objective of vigorous competition. This plan would provide for specific divestiture, within two years, of 5% of ADT's service revenues as of the date of entry of Final Judgment, for divestiture of an additional 5% in the following two years, and for periodic divestiture thereafter until, at the end of ten years, ADT's service revenues would not exceed 50% of total service revenues in the United States.

This proposal has the merit of simplicity and takes the parties and the Court out of a morass of local economics and controversy. It allows the local divestiture provisions to take into account natural economic factors, such as the entry of newcomers and growth of the market, while at the same time guaranteeing that in any event ADT's [fol. 278] share of service revenues will not exceed 50%. This alternative will give ADT needed flexibility in programming divestiture; at the same time it will insure that ADT is not crippled beyond anything contemplated by even the Government's proposed decree, and perhaps beyond repair.

(d) The mechanics of the Government's Section VII are not workable.

Wholly apart from the question whether viable operations can result from the Government's proposed divestiture, the mechanics of the Government's proposed divestiture simply won't work for the following reasons:

(i) The Government version of Section VIII requires ADT, in the cities specified in Appendix A, to establish and equip new central station companies and divest them, or service contracts, as the case may be, to unaffiliated

third persons "upon the best terms obtainable". In several cities, Appendix A to the Government's Proposed Decree requires ADT to sell, not merely to any eligible purchaser, but to a specific local competitor, contracts yielding annual service charges of from $25,000 to $125,000 "upon the best terms available" from this competitor. This provision literally cannot mean what it says. If ADT has to sell contracts to the only available buyer "upon the best terms" he will offer, the Government may as well ask ADT to give the contracts away. Consider, for example, the situation where the best bid obtained offers a price of only 50 cents on the dollar (of the cost to ADT of the new company, or of annual revenues on transferred contracts). The Government cannot require ADT to dispose of assets on confiscatory terms, *Hartford-Empire Co.* v. *United States*, 323 U. S. 386, 414 (1945), and this section cannot stand as the Government has drafted it.

Defendants propose meeting this problem with two changes: The companies and contracts are to be transferred "upon the most profitable and reasonable terms obtainable" instead of upon the best terms obtainable, to make it clear that ADT is entitled to a fair return upon its investment. To meet the situation where no profitable bid is obtained, and to give ADT some bargaining power where there is only one prospective buyer, defendants give ADT the alternatives of selling out completely or spinning off to stockholders.

(ii) Central station protection is a service industry and subscribers contract for that service. The quality and dependability of the service will, in the eyes of many subscribers, depend upon who is performing it. ADT's subscribers have all contracted to have protection services from ADT, and they have the right to see that their contracts are performed by ADT. ADT (indeed, even this Court) has no right to assign a subscriber's contract to a third party without the subscriber's consent. Defendants have therefore provided in the Government's decree that contracts to be transferred by ADT shall be transferred only

> "* * * with the written consent of the subscriber, which ADT shall use its best efforts to obtain." (Defendants' Proposed Decree § VIII.)

(iii) The Government decree would require ADT to build a fully equipped central station which no one may ever use. Section VIII(a) states that ADT is to build and equip central stations for new corporations; the next to the last paragraph of Section VIII then gives a prospective purchaser the option of acquiring the new corporation without the central station. ADT should obviously not be required to equip the new corporation until a purchaser is committed to buy the equipment. To make this clear, defendants have deleted the words "fully equipped and" at page 9 of the Government decree and have provided that the purchaser shall have the option, on reasonable terms, of (a) having ADT equip a new central station, or (b) permitting the new corporation's subscribers to connect to the ADT central station (as provided in Section VII(B) for a period [fol. 280] of two years. A purchaser might wish to minimze his capital investment in the early years, and this latter provision would enable him to accumulate profits for two years, an adequate shakedown period, before deciding whether to build his own central station or have ADT build one for him.

(iv) Finally, consistent with Grinnell's theory that AFA and Holmes should be left free to develop as substantial multi-city competitors, Grinnell proposes to leave AFA and Holmes free to acquire the new corporations once they have been divested. Once these two companies are under separate ownership, there is every reason to encourage their growth and development.

3. Subscribers Should Not Be Forced To Take Title To Installed Equipment, But Should Be Given An Option To Purchase.

The Government's complaint and its proposed decree rigidly insist (1) that title to equipment installed on subscribers' premises must be transferred to the subscriber, and (2) that service contracts cannot exceed one year in duration.

The Government's reasoning is that defendants have retained title to the equipment installed on customers' premises in order to "lock in" their customers and prevent them from changing central station service companies at the end of the contract period (Government Brief, pp. 31-34).

Requiring customers to assume title to installed devices, regardless of their wishes in the matter, is absurd and may have serious economic consequences both for the customer and the central station company. The National Fire Protection Association (NFPA), the National Board of Fire Underwriters (NBFU) and Underwriters' Laboratories, Inc. all require that equipment installed on the subscriber's premises be owned, not by the subscriber, but by the central station operator, who thus remains solely responsible for [fol. 281] the continuous maintenance and testing of this equipment. Without the approval, or certification, of these underwriters' organizations, the subscriber will not qualify for a premium discount.* Thus the Government's proposal that subscribers be compelled to take title would jeopardize their premium discounts.

In some situations, such as burglary detection installations, title is withheld for security reasons, such as preventing a would-be burglar from examining and neutralizing the devices; sometimes even the customer's personnel should not know or be able to find out the nature, number or location of the devices installed. In other situations, it is almost inconceivable that a customer should wish to buy devices. It is hardly in the interest of a tenant, for example, to have forced upon him title to defendants' devices, conduits and wiring systems, irrespective of the anticipated duration of his stay.** This forces on the tenant not only the initial expense of sale, but the added burden of disposing of the devices, conduits and wiring systems when he leaves, and perhaps even the obligation of incurring the expenses of removal.

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* ". . . where underwriters approved signaling systems are adopted, the owners of such protected premises receive a reduction in burglary and fire insurance premiums". (Government Trial Brief, p. 10).

** For example, in New York, Holmes burglary protection services are used by a great many furriers in the garment district, dozens of whom are tenants in a single building. Holmes contracts with the tenant (not the building owner) and may have a dozen different installations in the same building. These tenants sometimes stay 10 years, sometimes only one.

Instead of mandatory sales, defendants propose to have ADT*** offer subscribers the option of purchasing all installed equipment except certain burglary-detection devices [fol. 282] and devices made for the Government.* The proposal fully "unlocks" customers to competitive offers, and at the same time avoids putting defendants at the substantial competitive disadvantage they would otherwise be under (i.e., if they were the only members of the industry unable to offer customers the option of not buying). It has often been used in prior decrees. *Hartford-Empire Co.* v. *United States,* 323 U. S. 386, 420 (1945); *United States* v. *United Shoe Machinery Corp.,* 110 F. Supp. 295, 349 (D. Mass. 1963), *aff'd per curiam,* 347 U. S. 521 (1954); *United States* v. *American Linen Supply Co.,* 1956 CCH Trade Cases ¶ 68,542, p. 72,202 (N. D. Ill. 1956) (Consent decree); *United States* v. *International Business Machines Corp.,* 1956 CCH Trade Cases ¶ 68,245, p. 71,123 (E. D. N. Y. 1956) (Consent decree).

> "The compulsory sale provision of the judgment, strenuously attacked, is likewise a recognized remedy. *International Salt Co.* v. *United States,* 332 U. S. 392, 398-399. That required by the judgment in this case must be considered in conjunction with the alternatives associated with it. Appellants are left free to lease rather than sell if they can make a lease sufficiently attractive." *Besser Mfg. Co.* v. *United States,* 343 U. S. 444, 447 (1952).

*** In order to permit them to compete on equal terms with other non-ADT companies, defendants propose that Holmes and AFA should not be subjected to this requirement.

* Defendants have carved the following exception out of Section VII:

> "Defendants shall not be required to sell (i) confidential security devices, the effectiveness of which might be compromised by such sale, or (ii) devices made for any agency of the United States Government which will not consent to such sale." (Defendants' Proposed Decree, § VII).

As to existing installations, Section VII(A) of the Government's Proposed Decree directs defendants:

> "To assign to each service customer all right, title and interest to equipment installed or to be installed on the premises of the customer, without further charge * * *."

Presumably, the Government's theory in compelling defendants to transfer equipment already installed "without [fol. 283] further charge" is that defendants have made enough money already (Government Trial Brief, p. 132).

Precisely this reasoning was rejected by the Court in *Hartford-Empire Co.* v. *United States*, 323 U.S. 386 (1945). There defendants were accused of creating a monopoly through the acquisition of machine patents. In a series of provisions the Government sought to enjoin the defendants from leasing patented equipment, to require defendants to only sell such equipment and, as to certain patents, to grant royalty-free licenses. The Court rejected all of these provisions, holding:

> "Since the provisions of paragraphs 21 to 24 inclusive, in effect confiscate considerable portions of the appellants' property, we think they go beyond what is required to dissolve the combination and prevent future combinations of like character." (323 U. S. at 414)

> "The decree should permit any corporate appellant, acting alone, to lease or sell patented machinery. * * *." (*Id.* at p. 420)

Defendants have, therefore, revised Section VII(A) to require that installed equipment be offered to subscribers

> "at reasonable prices, terms and conditions which shall not be substantially more advantageous to ADT than its charges, terms and conditions for rendering service when there is no sale * * *." Defendants' Proposed Decree, § VII(A). See substantially similar provision in the IBM consent decree, 1956 CCH Trade Cases ¶ 68,245, p. 71,123 (E. D. N. Y. 1956).

4. Duration of Service Contracts Can Be Left to Subscribers.

Section V(E) of the Government's Proposed Decree permanently enjoins all defendants from entering into service contracts "in excess of one year's duration". Section V(F) requires defendants to give existing subscribers the right to terminate their contracts within 90 [fol. 284] days of the entry of the decree or one year from the commencement of the contract term, whichever is later. There is no provision whereby defendants can recoup unrecovered costs if the subscriber elects to terminate under Section V(F).*

The impact of these term provisions, taken in conjunction with the Government's proposals on title, is readily demonstrated in the following hypothetical:

Assume a case where an ADT competitor offers a service contract at an advance service charge of $1000 (an amount well below the cost of the installed equipment) and an annual service charge of $1,000. The competitor quotes those rates for a five-year contract. To meet this competition ADT quotes the same rates and gets the contract —only for one year instead of five, and with title to the equipment passing to the subscriber.

At the end of one year, when the question of renewal comes up, the subscriber owns the installed equipment free and clear for less than ADT's cost. ADT offers a new one-year contract at $1,000 annual service charge (which will still not recoup all of ADT's unrecovered installation investment). A competitor bids, offering a five-year contract. With no investment in installed equipment to recoup, he can profitably undertake the service at as low as $800 to $900 per year. Wholly apart from its inability to match the competitor's five-year guarantee against rate increases, how can ADT offer to meet a competitive bid of $800 or $900 on a one-year contract for an installation in which it still has a substantial unrecovered investment?

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* Defendants have deleted Section V(F) of the Government's Proposed Decree as unnecessary in any event, since roughly 20 percent of ADT's existing contracts terminate each year.

Under the Government's proposed decree, moreover, defendants would be precluded from offering service to any subscriber that insisted upon a three or five-year contract to protect himself against price rises. The Government would make defendants the only companies in the industry unable to offer fixed terms and conditions for a period longer than one year. This would limit, not pro- [fol. 285] mote, competition, since defendants would be prohibited from competing for the many subscribers who want long term contracts.

Compulsory one-year terms and title transfer contribute nothing to the creation of competitive conditions which defendants' option provisions do not provide. The only conceivable purpose behind the Government's crippling and confiscatory title and contract term proposals is a punitive one which has no place in a civil decree under the Sherman Act.

> "In an equity suit, the end to be served is not punishment of past transgression * * *" *International Salt Co.* v. *United States,* 332 U. S. 392, 401 (1947).

Defendants therefore propose that ADT subscribers be permitted to enter into contracts for a term of more than one year, provided the contract gives the subscriber the option of cancelling the contract at the end of the first year or on any contract anniversary date thereafter. See, *e.g., United States* v. *International Cigar Machinery Co.,* 1956 Trade Cases ¶68,426, p. 71,830 (S. D. N. Y. 1956) (Consent Decree). To cover situations where ADT quotes a long-term rate aimed at recovering costs over a three or a five year period, the contract may specify a "short term" rate to go into effect where a subscriber elects early cancellation.

5. Miscellaneous Modifications Made By Defendants.

(a) This record does not warrant extra-territorial relief.

Defendants have added a sentence to Section III of the proposed decree to limit its application to service rendered in the United States. The Government could not, as a matter of law, obtain an extra-territorial decree on the record outlined in its trial brief, designated depositions and designated documents. There is no evidence and no

claim by the Government of any conduct abroad by defendants which had any "substantial anticompetitive effects on this country's 'trade or commerce * * * with foreign nations' ". *Report of the Attorney General's National Committee to Study the Anti-Trust Laws*, p. 76 (1955).
[fol. 286] Nor could there be. Given the local nature of central station services it is obvious that foreign central stations can only service foreign communities. Even if the Government claimed, which it does not, that defendants had engaged in anticompetitive conduct abroad, it would still be true that:

> "The Sherman Act is not, of course, intended to protect foreign consumers against monopoly in their home markets." *Id.* at p. 79

Moreover, our courts are properly cautious in granting decrees which interfere with the sovereignty of foreign nations.* They will have their own laws, their own insurance regulations and their own concepts of adequate security and service. There is nothing in this record to show that there is any similarity between American and foreign central station services. Accordingly, defendants should not be

> ". . . caught between the jaws of this judgment and the operation of laws in foreign countries where it does its business." *United States* v. *General Electric Co.*, opinion on remedies, 115 F. Supp. 835, 878 (D. N. J. 1953)

(b) It is unnecessary to provide for *prima facie* effect.

If this is to be a consent decree, the Government is not entitled to insist that the decree be given *prima facie* effect in suits by the Government. Clayton Act, §5(a). If this is not to be a consent decree, the Government does not have to provide for *prima facie* effect.

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* *British Nylon Spinners, Ltd* v. *Imperial Chemical Industries, Ltd.*, All Eng. L. Rep. Vol. 2, p. 780 (1952), is perhaps the classic instance of the sensitivity with which foreign jurisdictions view attempts to stretch American antitrust concepts overseas.

(c) A defendant, its subsidiaries and employees should be considered one person.

To avoid the possibility that the decree would prevent a defendant from setting policy for its employees or sub- [fol. 287] sidiaries, defendants propose that a defendant, its employees and wholly-owned subsidiaries should be considered "one person" in Section II(I).

(d) Persons acquiring new corporations are not to be bound by the decree.

Defendants have inserted the words "stock or" in the next to the last sentence of Section III to make it clear that persons acquiring new corporations pursuant to Section VIII are not "successors" bound by the decree.

(e) Normal exchanges of trade information and license agreements should be allowed.

Paragraph (D) of Section IV, prohibiting exchanges of information on service charges and terms of sale, has been limited to information "not released to the trade generally" so that defendants can participate in normal and lawful trade association and other industry activities.

Defendants have added the following proviso to Section IV:

> "Nothing contained herein shall prohibit defendants from entering otherwise lawful patent trade secret or technical information agreements."

Central station technology is constantly expanding and changing and defendants want to be sure they can acquire or grant licenses on new development without risk of a contempt citation.

(f) Normal business dealings should not be prohibited in Section V(A) and (B).

Defendants have deleted Paragraph (A) of Section V, which reads as follows:

> "Taking any action having the effect of excluding or foreclosing any person from engaging in furnishing service;"

[fol. 288] Even a successful and lawful bid on a contract can have the effect of excluding a marginal operator from engaging in furnishing service. A decree "must not be 'so vague as to put the whole conduct of the defendants' business at the peril of a summons for contempt' * * *". *Hartford-Empire Co.* v. *United States*, 323 U. S. 386, 409 (1945).

For similar reasons, "unreasonbly low charges for the purpose of destroying competition or eliminating a competitor" may be enjoined; but low charges having similar effect should not be, absent such a showing of intent. See, *United States* v. *National Dairy Products Corp.*, 372 U. S. 29, 36-37 (1963). Defendants have, therefore, deleted the words "or with the effect" from Paragraph (B) of Section V.

(g) A flat prohibition upon acquisitions is uncalled for.

Section V(C) of defendants' proposed decree permits ADT to acquire central station businesses, even though they may compete with an ADT central station, upon the approval of the Court. Defendants propose this in lieu of the Government's flat prohibition of such acquisitions because it is conceivable that even the Government might find such an acquisition desirable under certain circumstances. For example, ADT should be allowed to purchase a company headed for failure if there are no other purchasers ready to buy.

(h) The price-fixing provisions of Section V(D) are unworkable.

Paragraph (D) of Section V, which requires defendants to charge no more in so-called monopoly cities * than the average rate charged in competitive cities, has been deleted. This provision is simply unworkable since unit costs in monopoly cities are frequently higher than unit costs in the larger competitive cities. It would literally require ADT to charge rates which would not recover cost in many locations.

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* A monopoly city is defined as one in which ADT has the only central station.

[fol. 289] (i) Defendants should not be prohibited from bidding upon Government installations which they have designed.

Paragraph (I) of Section V prohibits defendants from bidding for service on Government jobs where defendants have drawn the specifications and the specifications "are so drawn as to effectively preclude" a non-defendant from bidding. It is entirely possible for a special Government job to require custom-made equipment which only a defendant can provide. In such a case, if the defendant can't bid, the Government would get no service at all under the proposed decree. Defendants have, therefore, substituted for the Government's language specifications "drawn for the purpose of precluding" others.

(j) Large subscribers should not be deprived of the benefits of centralization.

Defendants have deleted paragraph (K) of Section V, which prohibits ADT from:

> "Soliciting any contract for the furnishing of service except on a basis whereby the local personnel of ADT solicits customers in the area in which they are stationed, rather than soliciting chain accounts at the headquarters of such accounts."

When, for example, the national security officer of American Can Co. asks ADT for a bid on all plants,* paragraph (K) would require ADT to tell him to talk to each regional ADT representative in each city where there is an American Can Co. plant. Or, if American Can Co. has a new plant in, say, Atlanta, Georgia, and its national security officer asks ADT for a bid on that plant, ADT cannot deal with him in New York unless paragraph (K) would permit ADT to fly its Atlanta representative to New York for talks with American Can Co. This is an absurd result.

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* Defendants have already agreed, in Section V(H) of their proposed decree, to negotiate each contract for each location individually. There is no need for the Government to tell ADT what personnel it can or cannot use in any given negotiation.

[fol. 290] The short answer to paragraph (K) is that if national accounts want local bids, they can get them. Certainly, nationwide chains can take care of themselves locally, and should be allowed the advantages of centralization if they are available and desirable.

(k) Defendants should be given time to terminate joint operations to assure uninterrupted service to subscribers.

The changes made in Section VI(A) with respect to the termination of the agreements among the defendants reflect the tentative agreements between the parties described above. Insofar as ADT and AFA still participate jointly in certain contracts, defendants agree that these should be terminated as soon as possible but suggest a period of two years to allow for the transfer of equipment and other necessary adjustments so that no subscriber's service is interrupted or its underwriter's rating jeopardized.

(l) AFA and Holmes should be free of the prohibitions on acquisitions, contract term, transfer of title to installed equipment and commission payments.

Paragraphs (C), (E) and (J) of Section V, and Section VII are inapplicable to Holmes and AFA in defendants' decree. The Government has virtually no evidence of anticompetitive conduct by these two companies. It is, moreover, good policy to assure the competitive vigor of these two companies by freeing them of the decree's restraints once they have been divested.

(m) Ten-year injunctions are sufficient on acquisitions, contract term, transfer of title and connections by competitors.

Central station protection service is a business experiencing rapid growth and substantial technological advances. Defendants' proposed decree, by creating Holmes and AFA as substantial new competitors, will basically recast the structure of the industry. The consequences of this change, [fol. 291] together with the right of new ADT subscribers to cancel their contracts at the end of any year, can only result in new and vigorous competition for ADT over the next decade. During this period, under either of defendants' divestiture proposals, ADT also will be systematically creat-

ing new competitors or transferring subscribers to existing competitors in other areas until ADT's share of yearly service revenues is about 50% of the national total. These injunctive provisions, which are aimed primarily at reducing ADT's economic power and facilitating the entry of new competitors, should clearly be unnecessary after 10 years of changes of this magnitude.

(n) Grinnell and ADT should have the right to apply to the court for relief from the decree on a showing of undue hardship or changed conditions.

The feasibility of even defendants' proposed Section VIII divestiture is at best a speculative projection of past results into unprecedented operating conditions. The economic impact upon ADT of its subscribers' annual option to terminate their contracts cannot be predicted. The salability of the proposed new central station companies, and the willingness of subscribers to permit their service contracts to be assigned to another company, are equally conjectural.

Grinnell and ADT are frank to admit that they simply do not know how well even their proposals will work. For this reason, they earnestly urge upon the Court an express provision in the proposed decree permitting them to apply for relief from any provision of the decree upon a showing of undue hardship or changed conditions in any given locality or in the service industry. Without such an express provision, Grinnell and ADT may find themselves unalterably bound to by an injunction or plan of divestiture which changed circumstances have rendered unworkable or unduly harsh. See *United States* v. *Swift & Co.*, 189 F. Supp. 885, 906-07, 1960 CCH Trade Cases, ¶69,871, p. 77,454 (N. D. Ill. 1960), *aff'd per curiam*, 367 U. S. 909 (1961).

[fol. 292] Conclusion

It is the essence of defendants' position on relief that the Sherman Act is directed to fostering competitive conditions, not the destruction of property.

> "* * * one of the fundamental purposes of the statute is to protect, not to destroy, right of property." *Standard Oil Co. of New Jersey* v. *United States*, 221 U. S. 1, 78 (1911).

The Government's proposals, to the extent objected to herein, simply cannot withstand fair scrutiny under this test.

Dated: April 6, 1964.

Respectfully submitted, Roger T. Clapp, Attorney for Defendant, Grinnell Corporation.

Of Counsel: Jerrold G. Van Cise, Denis G. McInerney, William Jannen, Jr., Cahill, Gordon, Reindel & Ohl.

[fols. 293-296] UNITED STATES DISTRICT COURT, DISTRICT OF RHODE ISLAND

Civil Action 2785

UNITED STATES OF AMERICA,

v.

GRINNELL CORPORATION, AMERICAN DISTRICT TELEGRAPH COMPANY, HOLMES ELECTRIC PROTECTIVE COMPANY AND AUTOMATIC FIRE ALARM COMPANY OF DELAWARE.

BRIEF OF DEFENDANT ALARM COMPANIES WITH RESPECT TO RELIEF—April 6, 1964

Matthew W. Goring, Hinckley, Allen, Salisbury & Parsons, Attorney for Defendants, American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware.

Of Counsel: Bleakley, Platt, Schmidt, Hart & Fritz

[fol. 297] UNITED STATES DISTRICT COURT, DISTRICT OF RHODE ISLAND

Civil Action 2785

UNITED STATES OF AMERICA

v.

GRINNELL CORPORATION, AMERICAN DISTRICT TELEGRAPH COMPANY, HOLMES ELECTRIC PROTECTIVE COMPANY AND AUTOMATIC FIRE ALARM COMPANY OF DELAWARE.

BRIEF OF DEFENDANT ALARM COMPANIES[1] WITH RESPECT TO RELIEF—April 6, 1964

Statement

Defendants submit herewith their views of appropriate relief. A comparision with the decree proposed by plaintiff will at once indicate agreement on many substantive points. There are however a few areas of disagreement. Defendants feel that in these instances plaintiff's suggestions are unnecessarily harsh and punitive and fail to give due weight to the probable effect of other provisions as to which there is substantial agreement.

It is to these limited areas of disagreement that this brief is directed. For the most part, the disagreement relates to the extent and not to the type of relief appropriate in the circumstances.

In conformity with the understanding outlined in this Court's order of December 18, 1963, defendants, for the purposes at hand and only for such purposes, assume the existence of liability. They do not admit the many charges set forth in plaintiff's brief nor its interpretations and conclusions. On the contrary, they believe plaintiff, in mak-[fol. 298] ing certain assertions, unduly generalizes and endeavors to create an aura of evil based on isolated in-

[1] American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware, hereinafter referred to as "ADT", "Holmes" and "AFA".

stances at variance with the long history of honorable business conduct by these defendants and their devotion to the public interest in the rendition of service protecting against fire, burglary and other hazards.

In the interest of brevity, applicable authorities are not discussed herein but are to be found in the brief of defendant Grinnell Corporation (hereinafter referred to as Grinnell).[1]

I

Divestiture by ADT

Although plaintiff seeks revolutionary changes in defendants' manner of doing business which would have unknown but certainly substantial and possibly diastrous effects, it also seeks extensive divestiture. It insists ADT in six years create new competitors or sell business to existing competitors in 48 cities, and in 59 other cities if, after ten years, it fails to show effective competition in each such city. Defendants contend that divestiture of such magnitude is excessive and punitive.

A. The Alleged Relevant Market:

Plaintiff asserts that the relevant market is central station service furnished by companies approved by insurance rating organizations and that defendants in 1961 served 82.61% of all central station subscribers and secured 87.85% of all annual service charges. AFA's, Holmes' and ADT's respective percentages were 2.01%, 19.45% and 61.15% of subscribers and 2.06%, 12.55% and 73.24% of annual service charges.

The alleged market is fast growing in terms of approved central station companies, central stations, subscribers and [fol. 299] revenue. Actual and potential competition is increasing and defendants' market share is declining.

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[1] As an aid to ready understanding of the nature and function of electric protective services and of the equipment used therein, defendant ADT respectfully begs leave to submit its catalogue. A copy thereof has heretofore been furnished to plaintiff. An additional one will be served with this brief.

With divestiture of Holmes and AFA, their resultant keen competition with ADT, and abolition of any contractual relationships between them or vestiges thereof, the market shares of Holmes and AFA should not be considered in combination with ADT's. In addition, each Holmes and AFA central station now encounters competition from non-defendant central stations. Accordingly, consideration is properly confined to ADT's market position.

B. Basis for Defendant Alarm Companies' Market Position:

Before treating the market over-all and its fast changing character, we briefly outline the reasons for defendants' and particularly ADT's prominent position. This also demonstrates the inadvisability of relief which will so enfeeble ADT as to disable it from furnishing industry leadership and create a vacuum no other will fill.

1. *Historical Background:*

ADT, like Holmes and AFA, was a pioneer.

Commencing in the 1870's, "District" messenger and telegraph companies sprang up across the nation and, within 30 years, were serving hundreds of municipalities. They furnished messengers to Western Union, and to customers who signalled by means of telegraphic call boxes in their premises connected by wire to Western Union or District Company offices. As the telephone came into wide use, messenger service declined and District Companies, although continuing to supply Western Union messengers, began using call boxes to furnish manual fire alarm and watchman supervisory service. After the great 1882 fire and at the request of the Chicago Board of Underwriters, ADT of Chicago had furnished night watch and fire alarm service to the Stockyards.

Eventually devices were developed which automatically detected unauthorized entry, undue heat, etc., and transmitted alarms to a "central office" where appropriate action [fol. 300] was taken such as the dispatching of armed guards or notification of police or fire authorities.

About the turn of the century, numerous District Companies were organized under a Western Union subsidiary, ADT of New Jersey, and many conducted their central

station operations from then existing, wide-spread Western Union offices.

Holmes commenced business at about the same time. In 1872, Edwin T. Holmes, exploiter of the electric burglar alarm and sponsor of the first telephone exchange, established in New York one of the first central offices.

Electrical wires were essential for central office operation. Western Union and the Telephone Company had wires and franchises allowing their maintenance in public ways. It was not unnatural that District Companies, affiliated with Western Union, and Holmes, which became a New York Telephone Company subsidiary in 1905, figured prominently in furnishing central station service.

ADT's affiliation with Western Union largely accounts for its far flung operations and its presence in many unprofitable localities. It made sense, in view of fixed costs of Western Union offices in those localities, to furnish also ADT central station service. (10 ADT central stations still operate out of Western Union offices.) Although ADT and Western Union have parted, ADT continues many loss operations because of loyalty to customers, security needs of establishments essential to the nation's defense or economic welfare, or the hope that the locality will expand.

AFA also was a pioneer central station company. It is descended from a company formed by W. B. Watkins, who in the 1870's devised one of the first practical thermostatic alarms, and thus AFA was early involved in fire alarm service in New York.

Defendant alarm companies being first on the scene naturally became entrenched before other central station companies who, for the most part, entered the market since 1945. ADT, with its widespread messenger service, from the outset had advantages naturally inherent in a multi-location, nationwide operation.

[fol. 301] 2. *ADT Research and Advertising:*

ADT's eminence is due not only to its high quality alarm service, but also to its research and promotional programs unmatched by others in the industry. By its willingness to spend large sums to solve ever arising, often complicated protection problems and by educating the commercial community to the need for alarm protec-

tion, ADT has created a demand and new market for alarm service. Patents have no or little significance. Hence, ADT's technological advances and advertising have benefited the entire alarm industry, business generally, and the nation's defense.

In each of the past several years, ADT's research program has cost over $1,500,000. It has developed or perfected many new systems, devices and procedures. For example, ADT developed the capacitance alarm which signals when the electrical field surrounding a protected area, such as a safe, is disturbed by foreign objects. It contributed to developing ultra-sonic systems which signal when sound waves filling a protected area are disturbed by movement. It has done much toward developing radio alarm transmission, and has developed devices which detect in milliseconds ignition of highly explosive or flammable materials and immediately trigger fire extinguishing equipment to avoid disaster at solid fuel rocket propellant plants, missile sites, oil wells, etc. Scores of other ADT scientific advances, large and small, have resulted in reliable, tamperproof systems, reduced false alarms, and, by industrial process supervision, have facilitated automation.

3. *Importance of ADT to Industry and Government:*

Because of its experience and wide-spread organization, ADT is frequently called on by industry and government to solve novel security problems and to advise on specifications for alarm requirements. It is called on to service Government installations in remote places such as Kwajelein, to assist (without charge) the Federal Bureau of Investigation in designing traps for persons engaged in criminal activity, and to advise on security problems at [fol. 302] missile projects. It serves several hundred government installations.[1]

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[1] e.g., Army, Air Force and Navy bases; Federal Reserve Banks; Pentagon; Central Intelligence Agency; Atomic Energy Commission; National Aeronautics and Space Administration National Security Agency; Library of Congress and numerous secret and classified installations. ADT proprietary systems, i.e., miniature subscriber-owned central stations, are used at Nike and other missile sites,

Many ADT employees possess high government security clearance and ADT has been accorded highest government priority in acquiring scare materials during times of emergency because of its importance to national security.

4. *ADT Has Established High Standards for the Industry:*

Standards of insurance inspection organizations for installation of systems and furnishing service are mere minimums to be met if a subscriber is to qualify for insurance premium discounts. In establishing higher standards for itself, ADT has set standards for the industry more stringent than those of insurance organizations.

The highly regarded manager of a non-defendant central station company[2] testified to ADT's contribution in setting standards of protective service:

> "* * * [T]he provider [i.e., a supplier of service], myself, has to have something that makes him toe the mark. That's something in the industry case I have to accept. In the case of fire alarm there's ADT. In the case of burglar alarm there's more or less Holmes, in these areas particularly. * * *
>
> "* * * [T]his intangible service is something that needs a yardstick. These people provide it in this particular case."

It is profitable to "cut corners" by, for example, reducing inspections which assure that systems are functioning [fol. 303] properly or by "bridging out" of service portions of a system which cause troublesome false alarms. Since ADT acquired General Alarm of Boston in 1955 with clearance of the Antitrust Division, it has been obliged to expend over $100,000 beyond ordinary maintenance expense to bring its alarm systems up to ADT standards.

Cape Kennedy, U. S. Mint, and military bases in the United States as well as abroad in Labrador, Greenland, Okinawa, France, Spain, Morocco, etc.

[2] Guibert of Newark District Telegraph Company, former president of Central Station Electrical Protective Association and an officer of National Burglar and Fire Alarm Association.

ADT's adherence to high standards has resulted in losses of less than .01% of the value of ADT protected properties.[1]

The ample inventory and personnel of a large scale operation are important, especially in time of national or other emergency. During floods, hurricanes and other catastrophies, ADT has, without charge to subscribers but at substantial cost to itself, shipped equipment and personnel from distant points to disaster areas to reinstate service promptly (*infra*, pp. 24-25).

Notwithstanding plaintiff's contentions as to illegal acquisitions, predatory behavior and pricing, ADT's market position and its ability to attract business of large concerns and the Federal Government result primarily and naturally from its pioneering, the wide-spread nature of the messenger business in which it had its beginnings, its reputation for standardized high quality service, its advertising and education of the public to the need for alarm service, its record of low loss ratios, and its willingness to conduct almost single-handedly the entire research program of the electric protection industry.

C. Effects, in General, of Divestiture Proposed by Plaintiff:

Continuance of ADT as a vital force in the market place and continuance of its high quality service to subscribers are jeopardized by plaintiff's proposed decree.

Notwithstanding ADT's alleged monopoly, it derives a modest return. In 1961, its over-all return on total gross assets and rate of profit were respectively 3.5% and 7.3%, after taxes.

[fol. 304] ADT's operations are peculiarly dependent on regular cash inflow. Pay rolls must be met and, because the service involves a large element of labor, constitute over 60% of total operating expense. Installation and repairs of equipment require continual cash outlays. The importance of its cash flow is illustrated by the fact that its depreciation expense in 1962 totalled $11,400,000 where-

[1] Estimated value of properties, excluding cash and securities, protected by ADT central station service exceeds $60 billions.

as cash expenditures for new capital additions totalled $14,600,000. In addition, pensions, which are unfunded, require annual outlay of about $400,000.

Plaintiff's proposals as to contract duration, retention of title to equipment, and price restrictions, would disastrously affect ADT's revenue and cash position. These novel changes, by themselves, may be so adverse that ADT will be unable to continue its superior service, its research program, or its operations in many deficit and marginal natural monopoly areas.

Anticipating economies required by defendants' (much less plaintiff's) proposal, ADT has cut back its research staff by one-third and further contraction of ADT is anticipated.

Notwithstanding disastrous effects of non-divestiture proposals, substantial loss of revenue [1] by termination of the ADT-AFA contract, and establishment of Holmes and AFA as powerful independent competitors, plaintiff insists on divestiture in six years of ADT business now providing revenue of over 10.3 million dollars. Based on 1962 data, the divestiture called for in Appendix A of plaintiff's proposal (let alone Appendix B) would reduce ADT's revenue by almost 17% and its already modest profits by about 45%. ADT's rate of profit would be reduced to less than 4%, below that acceptable even for public utilities. Such a return could not justify ADT's continuance in the central station business.

For the most part, the divestiture called for in plaintiff's Appendix A strikes at ADT's more profitable and not its low profit or deficit operating areas. ADT's operations in the latter areas must, as the result of divestiture elsewhere, [fol. 305] bear additional overhead expense. Hence, the proposed divestiture will force economies which can only reduce quality of service and require ADT to cease serving low profit and deficit areas.[1] Those areas are unlikely to attract new entrants and thus many subscribers will be permanently deprived of central station service.

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[1] About $1,900,000 in annual service charges.

[1] In 1961, 22 ADT central stations, which encounter no approved central station competition and serve over 2,750 subscribers, incurred deficits totaling $246,000.

Furthermore, as appears below, several ADT central stations, after divestiture as requested by plaintiff, would surely be rendered so unhealthy as to necessitate closing. This would result in economic waste and do nothing to create a competitive atmosphere.

D. Insignificance of ADT Acquisitions:

Plaintiff asserts that ADT's dominance results largely from its acquisition of other central station companies for the sum of $16,717,883 between 1945 and 1959. Of this sum, $13,500,000 was paid to the Automatic Fire Protection Co., which neither owned nor operated any central stations, in settlement in 1949 of a contract relationship of long standing which added nothing to ADT's equipment ownership or interest in the protection market. (See Grinnell brief, p. 7.) This payment was *not* for acquisition of a central station company. The sum of $2,445,014 was expended for Canadian purchases and $300,000 for the purchase in 1955 of the property of the General Alarm Corp. of Boston, the latter following clearance by the Antitrust Division.[2] In the case of the remaining acquisitions, costing $472,869, the overtures came from the sellers and were not initiated by ADT. Furthermore, several of these acquisitions were of companies not engaged in furnishing approved central station service.

[fol. 306] While defendants had sought to acquire central station companies shortly prior to the commencement of this action, the proposed acquisitions were expressly subject to clearance by counsel and the Clearance Section of the Antitrust Division and were dropped when it appeared that such would not be forthcoming.

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[2] Initially withheld, clearance was later granted after ADT, which offered to supply any data requested, submitted additional information. This occurred about two years after the "Cellophane" decision (*United States* v. *E. I. du Pont de Nemours & Co.*, 118 F. Supp. 41 [D. Del. 1953]). Prior to acquisition of ADT by Grinnell in 1953, the Antitrust Division had also inquired into ADT's affairs. (See Grinnell brief, pp. 12-15.)

E. Over-all Market Growth:

The alleged relevant market is so burgeoning that injunctive relief plus divestiture more moderate than proposed by plaintiff is clearly sufficient.

In 1945, eight central stations of non-defendants had Underwriters Laboratories' ("U.L.") approval.[1] Seven additional non-defendant central stations were approved by U.L. in the six years following 1945, nine during the next six years, and twenty during the last six years. By 1963, 42 central stations, owned by thirty-nine non-defendant companies, had U.L. approval. Most of these are approved also for fire service.

At least two companies, in addition to those having U.L. approval, are approved by fire rating organizations[2] and two applications for such approval are pending.[3]

Hence, there are at least forty-one non-defendant approved companies now operating forty-four central stations—an increase of 400% over 1945.

The market is fast growing in terms of revenue and subscribers. Between 1957 and 1961, total annual service [fol. 307] charges[1] increased 35% from 48 to 65 million dollars and number of subscribers increased 20% from

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[1] Includes two companies whose properties were later acquired by ADT. Approval for burglar alarm service is given by U.L., and for fire alarm service by other organizations, such as Factory Mutual and state and regional insurance rating bureaus.

[2] Alarm Engineering Co., Kansas City, Mo., approved 1962 by Missouri Inspection Bureau and U.L. application then pending; Circle Alarm, Indianapolis, approved 1963 by Factory Mutual and Indiana Rating Bureau.

[3] Suburban Patrol, Chicago, now furnishing unapproved central station service, application for approval pending before Illinois Inspection Bureau. Illinois Fire Safety Services, Inc., Chicago, has received approval of its central station building from that Bureau.

[1] This is the recurring service charge paid by the subscriber. It does not include installation, connection or "advance service charges" paid upon initiation of the service.

94,000 to 113,000. In the same period, U.L. certificated central station burglar alarms increased more than 50%. Current comparable figures will show continuing substantial market growth since not less than six companies have received approval since 1961 and depositions of non-defendants show steady post-1961 growth.

F. Growth of Non-Defendants:

The market share of non-defendants is increasing. Between 1957 and 1961, their revenues and subscribers have increased by about 90% and 67% respectively. Defendants' revenues and subscribers in the same period have increased only 30% and 14% respectively.[2]

The growth of non-defendants represents growth of competition since 37 of their 44 central stations operate in localities served by one or more defendants.

G. Potential Competition:

Burns Detective Agency, a nationwide watchman concern, and Brinks, renowned for armored car service, operate approved stations in Chicago and Tampa, respectively. It is reported that La Rue International recently acquired Central Station Signals, the largest non-defendant approved central station company. These new entrants have [fol. 308] displayed interest in wide scale operations and have the financial and organizational ability to conduct a vigorous nationwide central station business.

Other central station companies also have ability to expand. Annual service charge data is not fair index to their strength. Most furnish other alarm services and

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[2]

Annual Service Charges	1957 %	1961 %	1957 (Millions)	1961 (Millions)	% Increase
Non-defendants	8.67	12.15	$ 4.16	$ 7.90	89.90
Defendants	91.33	87.85	43.84	57.10	30.25
Total	100.00	100.00	$48.00	$ 65.00	35.42
Subscribers	**%**		**(Thousands)**		
Non-defendants	12.51	17.39	11.76	19.65	67.09
Defendants	87.49	82.61	82.24	93.35	13.51
Total	100.00	100.00	94.00	113.00	20.21

some conduct substantial watchman operations. For example, in 1961 Central Watch of Chicago received over $1,000,000 from watchman service and its approved central station, opened only after World War II, secured over $1,000,000 in annual service charges. Electro-Protective Corp. began approved service in 1958 in Newark and in 1961 in Baltimore. In 1961 it had local alarm revenue in Baltimore of more than $250,000 and, in both cities, secured annual charges for central station service of over $250,000. Both of these companies operate in competition with ADT. These illustrations show financial ability of relatively new competitors to expand and also that in a brief time they have, in fact, thrived and expanded.

Technological innovations now enable central stations to serve distant areas. By using telephone "carrier circuits" and "multiplexing", it is entirely feasible for central stations to receive alarms from distant cities and to respond thereto from a guard sub-station located there. A Dallas central station [1] thus competes with ADT's Fort Worth central station. In pilot projects now underway, central stations receive alarms from protected premises by radio. These developments reduce telephone wire charges, bring adjacent cities and remote suburban shopping and industrial areas into range of central station service, and will doubtlessly expand the market and increase its attraction for new competitors.

Many new companies first furnished local or other alarm service and, having developed clientele and revenue, then furnished unapproved central station or telephone answering alarm service, and thereafter became approved central station companies. Thus, companies furnishing other forms of protection, e.g., local alarms, direct connected, [fol. 309] proprietary and auxiliary systems, are potential approved central station companies.[1]

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[1] Smith Detective Agency & Nightwatch Service.

[1] Defendants actually contend that central station service is in the same market as those other forms of protection and that ADT possesses far less than 50% of such market. However, in view of the purpose of this memorandum, that contention is not pressed here.

In 1963, 176 organizations had U.L. approval for local alarm services; 8 including Minneapolis-Honeywell and Gamewell had Factory Mutual approval for furnishing direct connected systems; and 7 including Westinghouse and Gamewell had Factory Mutual approval for furnishing proprietary systems.

Unapproved, as well as approved, non-central alarm companies are potential, if not actual, competitors. Approved companies provide much unapproved service: in 1961, 38 non-defendant approved central station companies had over 13,000 burglar alarm subscribers but less than 4,000 had U.L. certificates.[2] The same is true of approved local alarm companies; the majority of their systems are not U.L. certified. There are scores of unapproved non-central station alarm companies throughout the country. The National Burglar & Fire Alarm Association membership includes 240 local alarm companies and it has been estimated an equal number are not members.

H. Ease of Entry:

A going local alarm company can enter approved central station business with particular ease. It has know-how, trained employees, recurring revenue from existing alarm operations to sustain a central station in its infancy, and a clientele which may be converted to central station service.

Equipping an approved station costs not in excess of $25,000. No heavy plant or equipment is needed. A thousand square feet in a fire proof building is ample for usual switchboards or consoles, batteries, wiring, other equipment and personnel. Equipment is readily available from [fol. 310] several sources.[1] Additional personnel, i.e., one

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[2] Incidentally, plaintiff, although excluding from the market unapproved companies, does include unapproved service by approved companies.

[1] The few complaints about unavailability of ADT's equipment relate almost without exception not to central office equipment but to devices installed in subscriber's premises which are designed for unusual, infrequently encountered protection problems. In any event, under defendants' proposal, ADT will sell equipment to all comers.

round-the-clock switchboard operator and one runner or guard, are required but not difficult to secure. No special skill or training is required and wages are not high, often housewives operate switchboards part-time and pensioners may act as runners.

ADT records and depositions show many non-central station subscribers in central station areas have similar establishments and protection problems as central station subscribers and are therefore central station prospects. Two large clothing chains, with stores having inventories up to $300,000, in recent years converted from central station to local service. IBM has two similar installations in range of ADT central stations. One uses central station service, and the other uses direct connected and telephone answering alarm service.

The most common local and central station burglar alarm systems receive insurance premium discounts of 20% and 30% respectively [2] and in some areas auxiliary and direct connected fire alarm subscribers receive 22% discounts while central station subscribers receive 25%.[3] In view of the acceptance of, and similar discounts accorded to, various alarm systems by insurance experts, many central station prospects use other forms of service, but with appropriate sales effort can be converted. Also, according to an owner of a central station company which conducts a million dollar annual watchman's business as well, hun-[fol. 311] dreds of establishments in Chicago use watchmen but are central station prospects.[1]

In sum, many companies now rendering non-central station protective service have clientele which will form strong nucleii for approved central station operations.

Being in a service business, a central station company has manpower as its chief requirement—and it is readily

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[2] Pillsbury, Tr. pp. 86-88.

[3] While some large cities bar direct connected or auxiliary systems or limit them to hospitals, schools, etc., such systems are allowed in other large cities in most smaller cities and in the suburbs of most, including New York and Chicago. In the Boston area there are over 1,000.

[1] Stackler Tr. pp. 109-112. In 1960, over $500 millions were expended in the United States for watchmen.

available. One can commence business on a small scale, grow gradually and compete evenly with others for almost any job since the business consists primarily of small transactions each giving rise to concurrent revenues and expenses. Sole proprietors with few employees and without sales or clerical forces, sophisticated corporate organizations, pension programs, etc., have conducted successful operations. A central station operation, because of its limited service radius, is relatively small and essentially local in character. Because of these considerations and the relative ease of entry above discussed, a high percentage of total national business does not have the same implication, from a monopoly power viewpoint, as would an equivalent percentage in another industry such as the production of heavy goods.

Even plaintiff makes no claim that any central station companies have succumbed or been forced out of business.[2] New and thriving entrants show ease of entry [fol. 312] and belie existence of power to exclude; the discussion of pricing, *infra* pp. 33-44, belies power over price which might ordinarily attach to a large market share in a different industry.

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[2] Plaintiff asserts generally that "defendants" had a "policy of coercion, intimidation and persuasion" to dissuade persons from commencing or continuing to furnish approved central station service. Deposition testimony of interested competitors recites perhaps a half dozen instances or conversations, some ambiguous, which can be assigned a coercive connotation. Most involve deceased or former ADT employees and occurred, if at all, at least several years ago. None involves Holmes. These few alleged instances, involving a handful of ADT's many and scattered employees, surely justify no conclusion that all or any defendants had a "policy", such as is ascribed to them by plaintiff, approved or authorized by management. To be sure, the interested deponents' business success, as well as market data, suggests the non-existence or at least the emptiness of the asserted "coercive policy".

I. Plaintiff's Divestiture Proposal:

Plaintiff's proposal, in requiring divestiture in at least 48 and possibly 107 cities, is punitive.

Ignoring local cost differentials and other variables, plaintiff assumes any city, where ADT is the sole source of service and secures $250,000 in annual service charges, can support two central stations and insists, in Appendix A of its proposal, that ADT create a competitor in each. Divestiture is demanded even in cities where healthy competition now exists. In Appendix B, plaintiff proposes divestiture in 59 cities (in addition to the 48 Appendix A cities) if in ten years ADT cannot show effective competition in each. ADT central stations in many such cities have regularly operated at a deficit and such cities, under plaintiff's own standards, are natural monopoly areas.

Competing central stations are located in or serve 21 of the 48 Appendix A cities.[1] For example, plaintiff seeks divestiture in Newark although both Newark District Telegraph Company and Electro-Protective Corporation have central stations there. From 1957 through 1961, Newark District's annual service charges increased from $364,000 to over $450,000. Between 1958, when Electro-Protective commenced business, and 1961, its annual service charges increased from $51,000 to over $210,000. Plaintiff would require ADT to sell two of its Chicago central stations although it competes there with Central Watch (the second largest non-defendant company), Burns, and Kedzie-Kane, and applications for approval of two other companies are pending. Under plaintiff's proposal ADT is to [fol. 313] create a new competitor and also sell $125,000 of its business in Long Island City. This is a part of New York City proper and is served by nearby central stations of Central Station Signals Company (the largest non-defendant company), Central Office Alarm (which operates also in

[1] Baltimore; Boston; Chicago; Cincinnati; Cleveland; Dayton; Detroit; Fort Worth; Houston; Huntington Park, California; Indianapolis; Jersey City; Kansas City, Missouri; Long Island City, New York; Mineola, New York; Minneapolis; Newark; Paterson; Pittsburgh; San Francisco and Washington.

Philadephia) as well as the defendants. On termination of the ADT-AFA agreement required by proposals of both plaintiff and defendants, AFA will take over the servicing of contracts now handled from ADT's Long Island City and Manhattan central stations. ADT will thereupon lose revenue of $500,000 in Long Island City and $800,000 in Manhattan.[1] The situation in Boston, where divestiture also is sought, is similar to Long Island City.

Trenton is included in plaintiff's proposed Appendix A although it operated at a deficit in 1962 and had before tax rate of profit of only 1.5% in 1961, 2.1% in 1960 and 6.8% in 1959.

On the assumption ADT made the divestiture sought by plaintiff, 1962 operating statements have been reconstructed on the basis of ADT's experience with the affected central stations and with stations of size similar to that remaining after such divestiture. These reconstructions confirm ADT's experience and views of other industry leaders that central station break-even points vary with local conditions. In the past 12 years, ADT central stations, in order to break even, have required as much annual service charge revenue as $480,000 and in one rare case as little as $74,000. Such reconstructions, without allowing for probable reduction in revenues occasioned by price competition, show that in at least 5 Appendix A cities, in addition to Trenton, ADT would operate at a deficit.[2]

[fol. 314] The reconstructions show also that at least 9 other ADT central stations in Appendix A cities would, upon divestiture, have after tax rates of profit of less than 4%.[1]

ADT central stations in not less than 10 Appendix B cities have regularly operated at a deficit for the past

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[1] Not only will ADT suffer loss of revenue, but negotiations with the union representing its employees, concerning the termination of the AFA-ADT agreement, may result in the transfer of skilled ADT employees.

[2] Akron—$7,652; Grand Rapids—$1,614; Richmond, Virginia—$10,168; San Jose—$29,682; Winston-Salem—$17,524.

[1] For example, New Haven: 2%; Oklahoma City: .7%; Portland, Oregon: 1.05%.

several years. Many others have operated at a deficit sporadically, others at a marginal profit and none realizes annual service charges of $250,000 or more.

In short, plaintiff seeks divestiture in many cities where it is unnecessary and in others where it is impossible unless ADT withdraws entirely. The over-all adverse effect of the Appendix A divestiture is earlier discussed (*supra*, pp. 7-9).

In addition, the equipping of central stations by ADT for new competitors to be created under plaintiff's proposal threatens to so overburden ADT's engineering and plant departments as to make normal service and maintenance impossible. ADT has never opened more than three central stations in any one year and that very seldom.

Clearly, plaintiff's proposal is unrealistic.

J. Defendants' Divestiture Proposal:

Wisdom dictates that divestiture by ADT be gradual and cautious lest both ADT and the vital industry in which it plays so important a role be irreparably undermined. A plan of divestiture must take account of and be subject to revision in view of the unknown but probably devastating impact on ADT's health and market position of changed practices as to retention of title to alarm systems and contract duration. Note should be taken of ADT's loss of almost $1,900,000 in annual service charges resulting from termination if the AFA-ADT contract. Additionally, AFA and Holmes will provide keen and able competition. Due regard must be given to the rapidly growing market and increasingly competitive atmosphere. Precipitous, extensive divestiture is not in order.

While ADT has 121 central stations in 112 municipalities, non-defendant central stations are located in 24 of [fol. 315] those localities and, based on plaintiff's asserted 25 mile radius service area, service of non-defendants is available in 34 of those localities.* On that basis, 78 ADT central stations in 78 cities encounter no approved central station competition.

Many of those 78 central stations are in localities which can sustain but one, or not even one, central station. Plain-

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* Figures in this and following paragraph are as of 1962.

tiff states a central station usually requires $125,000 in annual service charges and a service area of 150,000 population in order to break even. If this be the standard for determining the existence of a natural monopoly, 51 of such 78 ADT central stations serve natural monopoly areas: they have never secured annual service charges of $250,000 and many serve areas with populations of 150,000 or less.

If natural monopoly areas are excluded from ADT's market share and the market as a whole, its 1961 share, in terms of subscribers, was 57.8% or, in terms of annual service charges, 70.2%.

There remain 27 ADT central stations which encounter no central station competition but which, by plaintiff's standard, can support two central stations.

Defendants propose alternative plans for ADT divestiture which, coupled with effects of other items of relief, are calculated to reduce its total market share to 50% in ten years. Each plan provides for specific divestiture in the interim.

Under the first alternative, ADT proposes to create competitors in those cities which can in fact support two healthy, viable central stations. Obviously, nothing is gained and service will only deteriorate if divestiture in a particular locality results in two moribund competitors.

Notwithstanding ADT annual service charges of more than $250,000 and the absence of central station competition, these 27 cities include 14 which cannot support two central stations. ADT's Trenton central station operated at a deficit in 1962, had a before tax rate of profit of 1.5% in 1961 and 2.1% in 1960. Based on the above mentioned [fol. 316] reconstruction of 1962 revenue and expenses, five additional ADT central stations would operate at deficits if $125,000 annual service charges were divested, viz., Akron; Grand Rapids; Richmond; San Jose; and Winston-Salem (Estimated deficits appear in footnote, *supra*, p. 17). The reconstructions show also that eight additional ADT central stations would be reduced to marginal status, viz., Bridgeport; Jacksonville; Miami; New Haven; Nashville; Oklahoma City; Portland, Oregon; and Seattle. The after tax rate of earnings of each of these cities would be less than 4%. Operating expense ratios and the nature of present and anticipated commercial development are so

unfavorable as to afford no basis for belief that two central stations could survive in 14 of the 27 non-competitive cities wherein ADT secures annual service charges of $250,000 or more.

However, in the remaining 13 cities of Atlanta, Buffalo, Columbus, Hartford, Louisville, Memphis, New Orleans, Oakland, Omaha, Rochester, Springfield (Mass.), Syracuse, and Toledo, ADT will create competition by selling subscriber contracts yielding $125,000 in annual service charges [1] or by transferring such contracts to corporations formed by ADT, the stock of which will be sold or distributed to ADT stockholders.

This proposed divestiture is, of course, joined with the additional proposal that, after ten years, ADT will make further divestiture of its business, if any, in excess of 50% of the total market if the Court deems it necessary.

The 13 city divestiture proposed by ADT will reduce its annual service charge revenue by $1,625,000. The AFA-ADT contract termination will reduce ADT's revenue by about $1,900,000. This results in a reduction of its 73.24% market share, in terms of annual service charges, to about 68%. Its existing share, in terms of subscribers, is already [fol. 317] below 62%. While it is impossible to compute precisely its share of subscribers after the 13 city divestiture, it would be approximately 58%.[1]

Adding to this 13 city divestiture the unquestionably adverse effect on ADT's market position of other injunc-

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[1] The "break-even" point suggested by plaintiff on the assumption, apparently, that other companies have lower break-even points than those usual for ADT central stations. ADT has substantial expenses, not borne by many others in the industry, for research and engineering, pension and benefit plans, wages of employees with great longevity, etc.

[1] Figure based on divestiture of $125,000 in 13 cities and $1,900,000 from AFA contracts; and an average $695 annual service charge per subscriber.

Of Course, ADT's post-divestiture market share would be lower if its existing share, exclusive of natural monopoly areas, be used as basis for the computation. See p. 19, *supra*.

tive provisions contained in its proposal and its already declining share of the market, there is no need for further divestiture other than that which the Court may decree at the end of ten years if it then appears that ADT possesses an undue market share.

Under the second alternative, ADT commits itself to reduce its market share to 50% in 10 or fewer years and, in addition, to divest 5% of its current annual service charge revenue within two years of the date of judgment and to divest itself of a like amount of business in the two following years. A plan, including this provision for divestiture of approximately $5,000,000 in annual service charges within 4 years and specifying the method of divestiture, would be submitted to the Court for its approval at such time as the Court may designate.

II

Retention of Title to Equipment on Subscribers' Premises

ADT's service contracts (like those of practically every central station company) provide as follows with respect to alarm systems in subscibers' premises:

> "* * * [ADT] will * * * maintain such system in good working order, with the understanding that the entire system, including all devices, * * * and other materials [fol. 318] associated therewith, *is and shall be and remain the personal property of the Contractor* [ADT]."

Plaintiff regards this provision for retention of title as a "practice employed by defendants to retain monopoly power and injure and destroy competitors" (brief, pp. 31-34).

Notwithstanding that the complaint (Prayer, Paragraph 6) asks only that the subscriber "may have title", plaintiff's proposed decree (Section VII [A]) provides that the defendants be directed:

> "* * * to assign to each service customer, all right, title and interest to equipment installed or to be installed on the premises of the customer, without further charge as to existing installations and, as to future installations, for such defendant's regular installation charge."

The defendants' decree proposes that for 10 years ADT

> "* * * offer to each service customer upon entering into any new or renewal service contract, all right, title and interest to equipment * * * at reasonable prices * * *" (Section VII [A]).

A. Plaintiff's Proposal Will Impair Integrity of Service:

A decree which would compel defendants to sell to subscribers equipment on their premises would radically change the nature of the central station business and adversely affect the service rendered. The important fact is that the defendant companies are engaged in the business of doing but one thing, viz., furnishing *service* to protect life and property. The retention of title is an incident to that service but a vital one because it guarantees uniform and compatible working equipment both in the central station and on the subscribers' premises and thus provides for the best possible service. The concept of ownership of equipment on subscribers' premises as insurance of adequate service finds a paralliel in the Telephone System. The telephone in one's home is owned, maintained, and operated by the Telephone Company, thus insuring to the [fol. 319] public the best available communication service. There is centralized responsibility for every element involved in the making of a telephone call. Similarly, with respect to electric protection service in which the stakes are high—namely, life and property—the best possible service demands centralized responsibility for the inspection, maintenance and upkeep of all elements involved, including the equipment on subscribers' premises. This has been the basic concept behind retention of title for the entire 86-year history of ADT.

That concept has been traditionally followed throughout the industry. Both Holmes and AFA, whose service also extends back almost a century, have followed this concept from their beginnings, and the depositions in this case show that others in the field do the same.

Moreover, it is not the time honored judgment of alarm companies alone that retention of title is essential to the best possible protection against fire and burglary; it is also the judgment of various organizations which establish

minimum standards for companies engaged in the furnishing of protective service.

The National Board of Fire Underwriters in its Standards for the Installation, Maintenance and Use of Central Station Protective Signaling System for Watchmen, Fire Alarm and Supervisory Service (Pamphlet No. 71), provides:

> "The word 'shall' indicates provisions which are considered essential for protection of life and property."

and defines a Central Station System as:

> "A system or group of systems, the operations of which are signaled to, recorded in, maintained and supervised from an approved central station, in which there are competent and experienced observers and operators in attendance at all times whose duty it shall be, upon receipt of a signal, to take such action as shall be required under the rules established for their guidance. Such systems shall be independently [fol. 320] owned, controlled and operated by a person, firm, or corporation whose principal business is the furnishing and maintaining of supervised protective signaling service and who have no interest in the protected properties."

Underwriters' Laboratories, Inc., a non-profit organization, chartered in 1894, sponsored by the National Board of Fire Underwriters, has as a basic objective the operation of laboratories for testing, among other things, alarm devices, systems and materials. One of its requirements is:

> "A central station system is one in which the operations of electrical protection circuits and devices are signaled automatically to, recorded in, maintained, and supervised from a central station having trained operators and guards in attendance at all times. Central station systems are independently owned, controlled, and operated by a person, firm or corporation engaged in furnishing such supervised protective signaling service and having no interest in the protected property."

Mr. Donald D. Pillsbury, Manager of the Burglary and Glass Division of the National Bureau of Casualty Underwriters and a member of the Burglary Protection Council of Underwriters' Laboratories, testified that the whole structure of insurance coverage and premium discounts allowed to subscribers to electric protective service is dependent, at least in part, upon ownership and control of the signaling system by one other than the owner of the protected premises, i.e., the person furnishing the protective service. The application and value of these provisions was testified to by other officials: George F. Allebach, Chief Engineer of the District of Columbia Rating Bureau and George W. Saunders, Managing Engineer, Burglary Protection Division, Underwriters' Laboratories.

Numerous instances demonstrating the vital importance to the public interest of alarm company ownership of equipment, can be cited. For example, in the Kansas City [fol. 321] flood of June, 1951, ADT transported an emergency crew forthwith to the stricken area to assist local forces in emergency restoration of service and reconstruction of protective installations. This flood reconstruction project cost ADT approximately $98,000. Similar emergency action was taken in flood disasters in the years 1955-1959 at Pittsburgh, Cincinnati and Louisville. During 1955-1956 alone, hurricanes "Connie" and "Diane" caused damage to equipment on subscribers' premises in Boston, Baltimore and Waterbury requiring immediate repairs and replacements at a cost of $74,684.30, all of which was borne by ADT without any charge to the many affected subscribers.

This prompt restoration of servic for uninterrupted protection of life and property in these disaster areas through immediate and effective replacements and repairs was possible only because of ADT's ownership of equipment and ability to draw upon its inventory of standardized equipment and skilled personnel experienced in such work. The public interest could not have been so served if the plaintiff's program of vesting title in the subscribers had been in existence.

It would seem that the universal practice of company ownership of equipment extant so long, and regarded as essential not only by the industry but by independent

rating organizations, must have real significance and should not be summarily discarded as simply an instrument for the destruction of competition merely upon the adament insistence of the Department of Justice without support for its conclusions. There is, to say the least, a balance of elements involved which bears heavily upon the public interest, which plaintiff's proposal ignores.

B. Plaintiff's Proposal Will Impose Unnecessary Hardship on Subscribers:

A further matter of serious import presented by plaintiff's proposal is the effect upon the subscriber. The mandate to abandon title runs not only to the defendants —it would operate with equal force to require the subscriber to purchase the equipment on his premises. That burden is one which should not be imposed upon the sub- [fol. 322] scriber *in absentia.* As prescribed by plaintiff, a subscriber who desires a defendants' protective service against the risk of fire or burglary may obtain it only if he buys the equipment to be installed on his premises, conceivably an economic burden so heavy as to be tantamount to deprivation of the service of his choice.

Obviously, the initial money outlay required of the subscriber would be drastically increased since the vendor must recover upon sale his costs plus a reasonable profit. As will be seen (p. 35), the advance service charges on a new contract under existing arrangement do not approach recoupment of costs, let alone provide profit. *Buying* requires the commitment of a large amount of money today whereas the extant form of service contract requires *future* and lesser payments. At present, the subscriber, in effect, has the use of alarm company capital; compulsory sale would demand use of his own. Moreover, as owner of the equipment, the subscriber would have to bear all the risks and burden of maintenance which the defendants now bear. While naturally, the present service charges are intended eventually to yield compensation for those risks, compulsory sale would no doubt place defendants' service beyond the reach of many desiring protection. It would place the defendants at such a competitive disadvantage as to jeopardize their ability to survive.

More important perhaps, is the fact that in view of the

retention of title requirements contained in Underwriters' standards and existing practices of insurers, insurance premium discounts usually accorded for approved central station service may be unavailable to subscribers who own their systems.

C. Plaintiff's Proposal Will Impose Unnecessary Hardship on Defendants:

Plaintiff demands that each of defendants' current subscribers become immediately the owner of the equipment installed in his premises. Since service involving subscriber-owned equipment does not, under existing standards, qualify for central station approval, these subscribers may not receive insurance premium discounts. [fol. 323] That being so defendants would be precluded from continuing to furnish approved service to these subscribers and would be ousted from the approved central station business. Of course, non-defendant companies could offer approved central station service to these subscribers by the simple expedient of purchasing from them the equipment formerly owned by defendants and, under plaintiff's proposed decree, conveyed to the subscribers by defendants "without further charge". This windfall payment, as well as the desire for approved service, would divert many of defendants' subscribers to competitors. Thereupon, those competitors could secure service contracts containing provisions as to duration and retention of title which, according to plaintiff, create a "hold" over the subscriber. In short, while the hands of defendants would be tied, their many competitors, not parties to this action, would be unaffected by the restraints of the decree and would in effect be without competition from defendants.

This proposal by plaintiff could alone strip defendants of so much of their business and produce such a serious depletion of their revenue and assets as to imperil their existence.

D. Plaintiff's Proposal As to Existing Installations Is Confiscatory:

Finally, we invite the Court's consideration of plaintiff's proposal that title to equipment in existing installations be relinquished *without further charge.*

This notion is footed upon the false conclusion that the company has been paid for the equipment through the "advance service charge". Plaintiff seemingly regards the defendants' service as consisting of two distinct segments—one, the protective service *per se*, the other, the use of the equipment involved—for each of which a separate charge is made. This, however, is at variance with the fact that electric protective service is an indivisible unit consisting of these elements: (1) a central station equipped and staffed to receive and handle alarm signals in accordance with the contract, and (2) the placement and maintenance on subscribers' premises of devices which [fol. 324] will transmit alarms in given circumstances. The charge for this complete service is the total of annual service charge and a one time advance service charge for which the company is obligated to make material replacements as necessary during the entire contractual relationship. The advance service charge is not an installation charge in any true sense, and does not compensate the company for its actual costs of equipment and installation —to say nothing of affording a profit. The fact is that ADT, on a system wide basis, secures advance service charges representing less than 65% of its bare costs plus certain supervisory costs—and even less if all true costs are included. Neither do AFA or Holmes secure advance service or installation charges anywhere near their full cost for such equipment.

Nevertheless, plaintiff now insists that title to existing systems be assigned to subscribers "without further charge". Under plaintiff's proposal ADT, for example, must convey "without further charge" assets which, as of the end of 1962 appeared on its books as having a cost of $36 million after depreciation which represents about 48% of ADT's total net assets. The suggested deprivation of such assets would not only be ruinous to the defendants and their stockholders but would obviously be an unconstitutional confiscation of property.

For all of the above reasons we respectfully submit that the Court should not adopt plaintiff's suggestion with respect to relinquishment of title.

E. Defendants' Proposal:

Notwithstanding that retention of title has been an integral factor universally adopted throughout the industry during its entire existence, we do not wish to be as inflexible and arbitrary in insisting that there be no charge as is plaintiff in demanding its summary elimination. Although the defendants and the industry as a whole maintain the sincere belief that the retention of title to equipment on subscribers' premises as a *sine qua non* to the furnishing of service to protect life and property and to the successful maintenance of their businesses, defendants rec- [fol. 325] ognize the possibility that an experiment in divestiture of title and rendition of service to subscribers who own their own equipment may conceivably prove workable. With this in mind, the defendant ADT proposes that with respect to new and renewal service contracts, the subscriber have the option to purchase the equipment (see Section VII [A]), and that this experiment be conducted for a period of ten years. Under the option, the subscribers who want approved service and resultant credits can get them, and ADT will be in a position to offer approved service and thus be able to compete. If it proves workable, well and good. Possibly, in that event, the industry as a whole would follow. If, on the other hand, this program courts disaster for both subscribers and ADT, or either of them, then under other provisions of the proposed decree, application could be made to this Court for appropriate relief and such action taken by the Court as the circumstances may dictate. In other words, we see no reason why the judgment of the Department of Justice with regard to this vital element should be accepted at once and with respect to all service contracts, when there is no experience at hand to demonstrate what the results may be. Reason would seem to dictate that this is an area which calls for a trial period on a modified basis. This is the purpose expressed in the defendants' proposal and we earnestly urge its adoption.

III

Term of Service Contracts

A. Plaintiff's Proposal:

Plaintiff's proposed decree enjoins defendants from hereafter entering into service contracts in excess of one year's duration, and requires them to notify existing subscribers that they may without penalty terminate their contracts one year from the initial date thereof or ninety days from date of notification, whichever is later (Plaintiff's Proposal, Section V [E] & [F]).

Thus, plaintiff would accord existing subscribers an option to terminate their contracts after one year but, in [fol. 326] the future, subscribers may not enter into contracts of several years' duration even if accorded an option to terminate at the end of any year. In the future, under plaintiff's proposal, no contract can be written for more than one year.

B. Defendants' Proposal:

Defendants propose that all new and renewal ADT contracts shall accord subscribers an option to cancel on any anniversary date of the inception of service.[1]

C. Competitive Effect:

Defendants' proposal will encourage increased competition and reduce ADT's market share by making it easier for subscribers to discontinue ADT service and to substitute that of a competitor. This option should serve to loosen the alleged "hold" on subscribers resulting from longer term contracts without causing economic waste and hardship to subscribers and defendants which would naturally result from plaintiff's proposal.

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[1] Under this proposal, all ADT contracts will soon contain such option since about one-fifth of its contracts are subject to renewal each year.

D. Unnecessary Disadvantages to Subscribers Result From Plaintiff's Proposal:

A contract of several years' duration often benefits the subscriber. He desires such a contract to protect himself against annual price increases and to avoid the administrative bother of negotiating, considering and executing a new contract each year. (While ADT contracts contain a price escalator clause permitting it to request an increase on each service anniversary date, that clause has never been invoked and ADT has never refused to delete it if so requested.) While five and, to a lesser extent, three-year service contracts are standard in the industry, those few suppliers of service who prefer a one-year contract do so for the reason that it enable them to increase their charges annually if they see fit and also to terminate service to a troublesome subscriber (Stackler, Tr. pp. 131-134; McDowell, Tr. p. 17). In short, to stabilize their protection [fol. 327] expenses and to assure continuity of service, many subscribers prefer contracts of more than one year.

There would be other disadvantages to subscribers resulting from mandatory one-year contracts. ADT, as do some other companies, occasionally spreads its advance service charge over the life of the contract or a part thereof. This is done at the request of a subscriber who seeks to avoid a large lump sum payment at the inception of service. Alarm companies would naturally be unwilling to spread the advance service charge over a period in excess of the service contract term. The advance service charge (or the purchase price of the alarm system, under plaintiff's proposal) would always have to be paid within one year.

The annual service charge under a one-year contract would necessarily exceed that charged under a longer term contract. As appears elsewhere herein, ADT and the other defendants do not recover in the form of advance service charges the cost of installing a system. They look to the annual service charges received over a space of three or five years for their profit. Experience shows that during the life of a contract expensive repairs must be made occasionally and this is done without extra charge to the subscriber. However, the alarm company will under the law of averages realize a profit over the long haul, i.e., over the period for which the average subscriber continues

to take service. A company, assured of annual service charge revenue for only one year, cannot rely on the law of averages. Although expensive repairs might add years to the life of the system, there would be no assurance that annual service charges would be received for a sufficient time into the future so as to cover the cost of repairs, other costs and a profit. As a result, if a service contract were for one year, it would be necessary to increase annual service charges or to cease making repairs and replacements without extra charge. Since a mandatory short term contract will increase the cost of service to subscribers, it seems only reasonable, as defendants have proposed, to permit subscribers to choose between a short-term contract at a higher rate or a long-term contract at a lower [fol. 328] rate. This dual rate system is akin to that followed by insurance companies, lessors, etc., who frequently charge higher prices for short than for long term contracts.

E. Unnecessary Disadvantages to Defendants Result From Plaintiff's Proposal:

Plaintiff's proposal would place defendants at a definite disadvantage not suffered by their competitors, by preventing them from making available to subscribers price stability and lower charges logically made for longer term contracts.

In addition, mandatory one-year contracts will create tremendous additional administrative expenses. The service business consists of a large volume of small transaction. The average annual service charge per ADT subscriber is only about $695.00. One year contracts will increase five fold the sales effort, the work of preparing contract, payment and billing forms, and other details involved in handling subscriber contract matters. Presently, ADT sales and clerical forces must each year cope not only with new accounts but also with renewals of one-fifth, i.e., about 14,000, of its existing accounts. Obviously, defendants' administrative expense will be substantially increased if all contracts are for one-year periods.

Another unnecessary disadvantage to defendants resulting from mandatory one-year contracts would be the increased uncertainty as to their future revenues. At present, these companies, with outstanding contracts of several

years' duration, have an assured cash inflow for the reasonably near future and a cushion against the impact of sudden fluctuations in economic conditions. They have a basis upon which to plan future operations, commitments to labor unions, pensions, disability benefits, research programs, etc. Placing all contracts immediately upon a one-year basis would constitute a completely novel practice and make the future a matter of pure conjecture.

F. Any Restriction Should Not Be Permanent:

It is, of course, conceivable that the new practice as to contract term to be followed by ADT pursuant to defend-[fol. 329] ants' offer will become the industry standard and all companies may voluntarily adopt it. But, on the other hand, if that practice does not become industry wide, it is submitted that, upon completing its proposed divestiture, ADT should no longer be subject to this restriction and the competitive handicap occasioned by it.

IV

Plaintiff's Price Control Scheme is Unnecessary and Unreasonable

Plaintiff proposes that defendants must furnish service to customers in areas where they are the sole source of service at rates no greater than they charge in areas where there is another source of service (Plaintiff's Proposal, Section V [D]).

At the outset it should be noted that both Holmes and AFA have all their central stations in cities where there are competing central stations. There is no major city in the United States capable of supporting one or more central stations that is now without such service. Therefore, these two companies, if interested in expansion by internal growth, could probably establish new central stations only in areas served by existing central stations. Furthermore, nothing has been shown by plaintiff which relates to the pricing actions of these companies and which supports this decree provision as to them. This discussion therefore will be limited to plaintiff's proposal as it relates to ADT.

Plaintiff has not demonstrated to this Court any facts which would support its demand for relief on the question of pricing. In fact, its positions on pricing in the proposed decree and in its supporting brief are wholly inconsistent. On the one hand it says the defendants have engaged in improper pricing activities in competitive situations (that is, in competition with other central stations) by price reductions, successive bidding, and allowing customers to pay advance service charges over a period of time on an installment basis; on the other hand, in its proposed decree, [fol. 330] it sees nothing wrong with any of these activities, and seeks to use such finally determined prices as a rigid yardstick throughout the ADT system.

As will be shown in detail below, this rigid pricing restriction cannot be imposed on a nationwide service business. ADT's prices are determined, as are those in any business, by competition, by costs, and by a necessity to earn reasonable profits for those who have invested capital in its business. Price differentials which exist throughout the ADT system are traceable in large part to operating cost variations between large and small central stations, with the large stations generally competitively located and enjoying lower unit operating costs. The proposed system of rigid price control would result in ADT being required to operate many of its central stations situated in smaller non-competitive cities at a loss; in effect it would be required to sell service below cost.

A. Description of ADT Pricing System:

ADT's pricing is predicated on the normal forces operating in every type of competitive market. Its pricing is responsive to competition where it is encountered, and responsive to the costs of supplying service in all markets in which it operates.

In furnishing central station service, ADT has two sources of revenue: advance service charges and annual service charges.

The advance service charge is normally made at the inception of service, and is set at a target figure equivalent to the average installation unit cost for the number of protection units to be installed. This advance service charge is not an installation charge, since ADT is in the business

of providing service only; it is merely a charge made to safeguard the company's investment in equipment and as a condition for starting service in premises where there is no pre-existing ADT alarm system. For this one-time charge and the annual service charge, ADT in effect guarantees to replace the equipment as necessary without additional charge for the duration of the service relationship. [fol. 331] ADT does not recover the cost of installation of alarm systems through its advance service charges, even in those cities in which it comes close to obtaining 100% of its minimum basic advance service charge rates.[1]

ADT's cost of installation figures are based upon direct material and labor cost and such supervisory costs as are directly applicable to installation activities. General and administrative expenses and selling expenses are not taken into account, nor is there any margin for profit included, plaintiff's allegation to the contrary notwithstanding. Costs of installation have consistently exceeded advance service charges by substantial margins.

Each installation of an alarm system is a tailor-made job. There is no such thing as a standard installation because of the variations in building construction (steel, concrete, wood), layout (widely scattered devices requiring long wire runs to connect), physical conditions (erratic heat sources such as furnaces, unusually high ceilings, corrosive industrial processes), and the frequent requirement that installations be made without interruption of the subscriber's normal operating routine.

The annual service charge is the other component of ADT's revenue from central station service. Together with the advance service charge, it is designed to cover all the costs of furnishing service to subscribers, and to produce a return on revenue and invested capital consistent with sound business practice.

In developing service charges, ADT follows the usual course of projecting a target revenue sought for the future. This figure is a guide, based on the known and anticipated expenses of the company for the ensuing year. Known expense items include, in addition to direct operating and

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[1] Annual and advance service charges developed by ADT are referred to as Minimum Basic Rates (MBR).

selling expenses, such items as research and development costs and pension expenses for employees, both of which are substantial and which are not borne by non-defendant [fol. 332] central station companies. After considering expenses, ADT's proposed rates are computed so as to produce the hoped-for reasonable rates of return on projected revenue and invested capital. Both the projected revenue and the proposed rates are, of course, nothing more than desirable goals, designed to enable coherent and rational planning of future operations. ADT's revenue and profit goals are no less subject to the variables of increased operating expenses, declines in business and influence of competition than are those of any other company.

Furthermore, there is nothing sinister or unusual about the practice of business firms operating in a multitude of cities being guided in their pricing policies by the goal of a satisfactory over-all rate of return on all operations taken together. A firm's credit rating, per-share earnings and dividends and ability to obtain long term capital, all depend not on its position in a single product or geographical market, but on its over-all financial performance. A firm ignores this fact of business life at its peril.

B. Distribution of ADT Revenue and Subscribers:

It is of great importance to note that as of 1961 ADT derived 66.1% of its central station revenue from central stations located in 34 cities where central station service was available from at least one competing central station.* These 34 competitive cities produced 69.3% of ADT's net earnings from central station operations. ADT subscribers located in these cities account for 66.2% of all ADT central station subscribers, and 69.1% of all ADT central station protective units are installed in these competitive cities. In short, these 34 cities account for some 66% to 69% of ADT's central station business, with the remaining 31%

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* For the purposes of this brief, these cities will be referred to as "competitive cities", although ADT considers that it is in effective competition in many other cities with other forms of protective service.

to 34% being spread between some 78 cities in which there is no competing central station.

[fol. 333] C. Earnings and Costs:

In 1961, ADT earned before taxes, a rate of return on revenue in the competitive cities of 14.37%. By contrast, its rate of return in the so-called non-competitive cities was 12.44%.* From these figures, it is apparent that ADT's competitive cities are more profitable than its 78 non-competitive cities. This is traceable in great measure to the higher unit operating costs incurred in the non-competitive cities. These higher costs stem from the fact that central station operations in the non-competitive cities are typically smaller than those in competitive cities, with subscribers more scattered within the operating area, requiring a relatively greater expenditure of labor for operation, inspection and maintenance. Further, operating personnel requirements are not proportionately reduced with smaller numbers of subscribers, resulting in increased "stand-by" time for guards and runners.

An indication of this increased operating expense can be seen clearly in the following figures (based on 1961): operating and plant (maintenance and inspection) expense per unit of protection in operation was $17.91 in competitive cities and $23.07 in non-competitive cities. Thus, these expenses in non-competitive cities are some 29% higher per unit than in competitive cities. To counteract this increased operating expense, ADT's unit prices in areas where such expenses are incurred have been somewhat higher than in low expense areas. As a result, ADT has secured, on the average in 1961, $48.55 per unit of protection in operation in the non-competitive areas as compared to $42.54 average revenue per unit in the lower-expense,

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* These and following computations are based on averages of the two groups of cities. Within each group, of course, there are variations; for example, although there were in 1961 some 22 deficit offices in the non-competitive group, other offices in that group operated at varied rates of profit, from marginal to satisfactory. And of course, the plan of divestiture proposed by ADT will affect earnings ratios in many of these cities.

[fol. 334] competitive areas. This increased revenue per unit is some 14% higher than the revenue per unit in the low expense areas.

That the distinction in pricing between high expense and low expense areas does no more than compensate for the expense differentials is clearly shown by a comparison of 1961 net earnings per unit of protection in operation: $6.04 per unit in the non-competitive areas, and $6.11 in the lower expense, competitive areas, a difference of $0.07 or slightly more than 1%. The difference in prices charged between these groups of cities is nothing more than a reflection of the difference in expenses in furnishing service.

Since ADT's 34 competitive cities generate some 69.3% of ADT's net earnings from central station service, it is clear that there is no need for ADT to "subsidize" competitive cities with profits from non-competitive cities.

Plaintiff places much stress on the reporting of deviations from standard prices (MBR) on a city by city basis. Far from downward deviations being confined to competitive cities, it is almost universally found that downward deviations occur throughout the ADT system, without regard to whether the particular city has competition from another central station. Only 18 out of 119 ADT central stations reported that over-all annual service charges contracted for in 1961 equalled or exceeded 100% of standard. The remaining cities, of both competitive and so-called monopoly groupings, had MBR deviations below 100%. Similarly, only 11 stations reported that advance service charges contracted for in 1961 equalled or exceeded 100% of minimum basic rates.

Plaintiff has particularly singled out Miami as a non-competitive or monopoly city in which ADT has exacted rates in excess of those charged in competitive cities, and indeed, in excess of the minimum basic rates set by ADT. The explanation for this rate variation is quite simple, and is illustrative of the many variables in central station operations which require individual analysis.

ADT renders central station service not only in the City of Miami itself but also in Miami Beach and related areas [fol. 335] which are situated on a long narrow island lying parallel to the mainland, and connected to it by a small number of bridges or causeways. Because of this peculiar

geographic feature, the leased telephone lines connecting ADT's central station to its subscribers' premises on the Miami Beach island are far longer than would normally be the case, considering the relatively short straight line distance between the central station and the protected premises. As a result, the leased line charges paid by ADT in the operation of this central station are far in excess of those normally incurred by ADT central stations having approximately the same number of subscribers.

For example, in 1961, ADT's central station wire rental expense in Miami was $79,024, approximately 21.9% of its annual service charges received that year. ADT's experience in the operation of central stations has shown that wire rental expense for a station serving approximately the same number of subscribers as Miami should run in the vicinity of 8.2% of annual service charges received. Thus, ADT sustained in Miami excessive operating expenses in the form of wire rental charges of approximately $49,000 per year. Plaintiff has laid great stress on the fact that in 1961 ADT records show that it received 105.6% of its minimum basic annual service charges on new contracts for service to be operated out of the Miami central station. The minimum basic rate for these contracts was $136,694, and the amount secured by ADT was $144.416—a difference of $7,772. The over-all amount received in 1961 in excess of minimum basic annual service rates on all new and existing Miami contracts in force was $27,000—still $22,000 less than the excessive wire expense stated above.

D. Competition and Pricing:

Plaintiff states (brief, p. 26) that in 1954 ADT adopted a "dual pricing system", and that under this system "the company continued to establish standard rates without the restrictions normally imposed by competition". *Rate setting is not price getting.* As a matter of fact, in 1961 twenty-two ADT central stations located in cities where [fol. 336] there was no competing central station each operated at a deficit. The deficits in these cities were not unique to 1961, but on the contrary had been sustained for several years.

Surely such operations are not indicative of power over

price; rather, this performance is indicative of the fact that ADT's prices are, in all of the cities in which it does business, regulated by the ordinary and ever present influences of competition and value judgments by prospective subscribers as to the real worth of the service to a commercial enterprise. It must be constantly borne in mind that central station service is not necessary to the conduct of any business or trade. It is not a service, which if unavailable, would limit or preclude any business from being operated in an efficient, profitable manner. Central station service and the equipment installed on the subscriber's premises for the furnishing of such service are not revenue producing items to the subscriber. In this respect at least, the price for such service is regulated, not only by competition both actual and potential, but by the actual cost savings which a subscriber can realize by the use of this service and by what he feels he can afford to spend for this additional protection of his premises, taking into account that many subscribers have various types of casualty and fire insurance protection covering their premises.

ADT does not have a "dual pricing" system. Its rates in the so-called monopoly towns are as subject to control by market forces as its rates in the competitive towns. A strong illustration of this can be seen in an analysis of ADT Competition Reports, all of which have been available to plaintiff. In approximately 9,330 instances ADT, because of price resistance on the part of the subscriber, reduced its service charges in order to obtain the business. There are some 1,827 instances of this occurring in the 78 cities which plaintiff contends are monopoly cities. In addition, in those 78 cities there are some 1,500 instances in which ADT quoted prices lower than MBR because of competition from some form of protective service other than the central station type.

[fol. 337] Plaintiff has in effect conceded that ADT prices its service properly in cities where there are other sources for central station service, by proposing that its rates for comparable service in non-competitive cities be the same as the annual average charged for the same type of service in all competitive cities (Plaintiff's Proposal, Section V[D]). This is a tacit recognition that the practices which plaintiff condemns in its brief as being

utilized "to retain monopoly power and injure and destroy competitors" are nothing more than the ordinary and proper responses of any business to competitive activity. Price reductions to meet competitive offers, submission of successive bids to meet competitive price reductions and negotiating for graduated, periodic price increases over the life of a contract rather than lump sum increases on renewal are nothing more than ordinary selling techniques used in a highly competitive market. Although plaintiff has devoted much of its effort in attempts to characterize these conditions as being injurious to competition, their existence is really indicative of performance in a highly competitive market.

ADT meets price competition on a job by job basis. That is, no area-wide price cuts are made, but salesmen may recommend that price reductions be made in order to obtain a specific job on which competition has been encountered. The competition may come from central station, local, direct-connected, proprietary or auxiliary alarm services or from watchmen, patrol or guard services. Competitive price reductions by ADT occur in the so-called non-competitive cities just as they do in cities where central station service is available from competitors. The important thing to remember about competitive price reductions is that they take place in many situations in which the potential subscriber is considering services which plaintiff claims not to be in the relevant market. For example, ADT records will show many instances in which it was necessary to deviate from standard prices in order to compete with companies which do not offer approved central station service. Among these companies are Autocall, Die-
[fol. 338] bold, Gamewell, Minneapolis-Honeywell, Mosler and Notifier which offer auxiliary, proprietary and direct-connected services; these six companies alone were involved in over 700 solicitations in which ADT was offering central station service. In many such instances, ADT found it necessary to quote prices below its minimum basic rates.

Plaintiff alleges that defendants have "consistently established rates and effected rate increases wholly without consideration of the forces of competition." (Plaintiff's brief, pp. 24-25). In support of this contention, plaintiff relies on a memorandum prepared by the ADT

controller in 1957 which states the ADT relies on its good offices to support the poor ones to the degree necessary to produce a satisfactory system earnings ratio.

It has been previously shown that ADT's poor offices are concentrated in the non-competitive cities and many are operated either at a deficit or with minimal earnings because of high unit operating costs. For example, in 1961 there were 51 ADT central stations in non-competitive cities each with gross central station revenues less than $250,000. Twenty-two of these operated at a deficit. The net result of this situation is that ADT must look in large measure to its healthy, competitively-located central stations to produce modestly profitable system-wide results.

Similarly, plaintiff's allegation that ADT has sufficient power over price to obtain rate increases without regard to competition is unfounded. For example, the following table will show that ADT has, during the years 1958 through 1962 had relatively minor but comparable increases in average revenue per unit of protection in both competitive and non-competitive cities:

City	*Average Revenue Per Unit—1958*	*Average Revenue Per Unit—1962*	*Percent Change*
*Chicago	$35.81	$40.83	14.02%
*Dallas	32.44	34.99	7.86%
Hartford	39.71	44.18	11.3 %
Miami	46.57	47.46	1.91%
Oklahoma City	39.80	43.13	8.37%

* Competitive central stations in these cities.

[fol. 339] E. Amortization of Advance Service Charges:

Amortization of advance service charges is cited by plaintiff (brief, p. 37) as a further indication of ADT's predatory pricing designs. Plaintiff would have this Court believe that the amortization of advance service charges is nothing more than a competitive weapon to be used in combating solicitations made by competing central station companies. In support of this (brief, p. 38) it is stated that 1,769 ADT subscribers were paying advance service charges on an installment basis in 1961, and that those charges amounted to $2,476,756, implying that these figures are the sole result of competitive activity. In fact, 700 of these sub-

scribers (39.6%) and $1,022,846 (41.3%) of this group are in the so-called monopoly cities. When these figures are viewed in connection with the fact that approximately 34% of ADT's subscribers and revenue are located in the so-called monopoly cities, it is apparent that the amortization of advance service charges occurs with somewhat greater frequency in the cities where there is no competing central station, and that amortization, far from being a competitive weapon, has been used by ADT at subscriber insistence on a system-wide basis. If it was employed by ADT primarily as an offensive competitive weapon, one would expect to see a disproportionately high incidence of amortization charges in the competitive cities. Just the reverse is true.

F. Summary:

Because ADT very often obtains the business even when its rates are higher than those charged by its competitors, it can reasonably be concluded that the company possesses considerable "good will" and has earned a reputation for providing good service that commands a premium in the market place. Such superior reputation, even though it may work to the disadvantage of competitors, does not violate the Sherman Act.

In summary, it is clear that ADT's pricing has not been predatory; price differentials which do exist between competitive and non-competitive cities are influenced in great [fol. 340] part by cost variations between such groups of cities, with substantially higher operating costs being incurred in the non-competitive cities.

To require ADT to charge the same rates in all cities is to ignore these cost variations that exist as a result of local economies based on size, and will, in many locations result in ADT being required to sell service at a loss, and with great detriment to the quality of service it now renders throughout its system and may necessitate the termination of service in many deficit localities.

V

National Accounts

Plaintiff proposes that ADT be restricted in the manner in which it deals with large subscribers having protected premises in several cities (Plaintiff's Proposal, Section V [K]). It would require local ADT sales personnel to solicit service contracts only in the city where the protected premises are located. ADT personnel would be forbidden to negotiate for service with multi-city subscribers except on this local basis, without regard to the purchasing policies of the subscriber.

A brief statement of the organization and development of ADT's national account system is necessary to evaluate the impact of and need for this restriction. Some 35 years ago, at the instance of several multi-location subscribers, ADT agreed to handle all contracts with such subscribers through a single sales representative located in the headquarters city of each subscriber. Where the headquarters of the subscriber are located in New York City, the account is known as an "Executive Account"; where the headquarters are in another city, the account is known as a "National Account".

In these cases, the ADT representative in charge of the account is expected to be familiar with the protection policy of the subscriber, many of whom have large valuable manufacturing facilities scattered throughout the country. Such a subscriber generally has a corporate staff repre- [fol. 341] sentative charged with responsibility for developing physical security standards for its facilities. In addition, these subscribers generally have central legal departments which must approve all contracts for services and supplies. Finally, many of these subscribers have centralized payment systems for the purchase of services and materials.

The majority of these multi-location subscribers, have, as a matter of their own internal administration, centralized authority for purchasing at a single administrative location. Their local plant managers and operating personnel may have only the authority to recommend the installation of protective systems and services. But decisions are made at corporate headquarters, where they can be conformed

to an over-all protection policy and where the authority to enter into contracts is centralized. Thus, the ultimate decision on protection is removed from field managers.

ADT has adapted its sales force to conform to these policies of its subscribers; it certainly does not control the internal organization of its customers.

ADT has not foreclosed any competitor from obtaining service contracts with large multi-location subscribers. Each solicitation and contract is handled as a separate unit; there are no exclusionary contracts covering future protection needs, and all subscribers are free to obtain protective service from whatever source they desire for each individual location to be protected.

In fact, the depositions in this case show that ADT competitors protect many locations of these multi-city subscribers, and have been successful in obtaining such jobs in competition with ADT. In this era of swift communication, there is no reason why any other company cannot deal effectively with the distant headquarters of an organization which prefers to handle its protection matters at that point.

Furthermore, the Central Station Electrical Protection Association, a group of central station companies comprising practically all of the non-defendant central station companies in the United States, holds itself and its members out as having the capability of furnishing service on a [fol. 342] nation-wide basis and, in the words of one of its former presidents, was formed for the purpose, among others, of "having a means of telling a company [a subscriber] who was opening up a branch in another area as to whether it could obtain services from more than one source."

The practical effect of this decree provision would be that ADT could no longer do business with any customer who did not choose to conclude a service agreement in the city where the premises were located. Concomitantly, the provision would not make it any easier for an ADT competitor to obtain such business, for he would still have to communicate with the headquarters of the subscriber, as he does now. The net result would be to deprive the subscriber of the benefit of competitive bidding by ADT.

VI

Connections to Defendants' Central Stations

Plaintiff proposes that in any locality where a defendant operates the only central station, such defendant must receive signals from subscribers of any person who desires to furnish service and, on receipt of signals, notify that other person (Section VII [B]).

ADT assents to a somewhat modified form of this proposal. For 10 years and on appropriate contract terms, it will allow connections to premises of subscribers of other alarm companies, but no one company shall have that privilege for more than 2 years—amply time for a potential competitor to build up clientele warranting opening of his own signal receiving facilities if he so chooses.

This proposal is opposed as a permanent arrangement since it creates divided responsibility for the functioning of alarm systems. Because of electrical intricacies, it is often difficult, in event of failure, to ascertain just where the fault lay. Moreover, since there are hundreds of local and other alarm companies, the capacity of defendants' stations could become so overburdened as to interfere with their own operations.

More important, however, is the fact that this relief is unnecessary. There are telephone answering services in [fol. 343] practically every municipality of any significance. Some of these services presently perform the function plaintiff seeks to impose on defendants (Newark District Telegraph Company, Tr. pp. 147-149) and, being small and geared for such an operation, can doubtlessly do so less expensively.

VII

Only Limited Injunctive Relief as to Holmes and AFA is Appropriate

Holmes and AFA possess relatively small market shares (*supra*, p. 2). Each of their central stations now encounters competition from non-defendants and, upon divestiture by Grinnell, will face competition from ADT.

While plaintiff demands no divestiture by Holmes or AFA, it seeks to subject them to sweeping injunctive

prohibitions. Under defendants' proposal, Holmes and AFA would be subject to prohibitions similar to many proposed by plaintiff but they would be exempt from others such as those respecting acquisitions, contract duration and retention of title.

While plaintiff has made generalized charges against all defendants, it is plain that the involvement of Holmes and AFA is limited. To the extent such charges do relate to them in any way, the injunctive provisions suggested by defendants surely provide a complete cure.

The 1906 ADT-Holmes agreement stressed by plaintiff was formally cancelled in 1947. The 1907 agreements between AFA, ADT and Grinnell likewise terminated many years ago. Any alleged adherence to those or other arrangements between the defendants, and the continuation of AFA's 1954 agreements with ADT and Grinnell are barred by injunctive provisions of the relief proposals of both plaintiff and defendants.

AFA is not charged with having acquired competitors. Holmes has made no acquisitions for decades. Their negotiations prior to the institution of this action for the acquisition of other companies were terminated, and in any event, were conditioned upon securing appropriate clearance. In view of their comparatively small size and forth-[fol. 344] coming independence of Grinnell and ADT, there appears no warrant for barring acquisitions by them.

It would be most appropriate to subject either of these companies to restrictions as to retention of title to equipment in subscribers' premises and duration of service contracts. Both Holmes and AFA are in substantially the same position as ADT with respect to equipment in subscribers' premises (*supra*, pp. 27-28). Plaintiff's proposal of compulsory sale of such equipment would, as to them, be equally damaging and confiscatory. They, like ADT, would incur needless administrative and sales expense if contracts could be written for but one year (*supra*, p. 32).[1] Non-defendant companies will not be required to deviate from the standard industry practice as to retention of title or

[1] In any event, Holmes' practice is not to renew contracts on expiration of their initial three year term but to permit them to run from year to year.

contract term. In view of these considerations, it would be in the best interests of competition to allow these companies to operate in the same manner as the remaining members of the industry.

VIII

Miscellaneous

A. ADT Should Be Free of Restrictions Respecting Contract Term and Transfer of Title to Equipment in the Localities Listed in Defendants' Proposal Until Divestiture Has Been Made Therein:

Unless ADT service contracts in the thirteen cities listed in Appendix A of defendants' proposal remain free of the restrictions respecting title to equipment and length of contract term, ADT will not have salable assets in those places. It will become well-nigh impossible for ADT to interest any prospective purchaser in subscriber contracts which can be terminated on short notice and which have no equipment associated with them. Furthermore, in these thirteen cities, immediate subscriber ownership of equipment and an immediate reduction in contract term confers no advantage on the subscriber, since at present there is no source of central station service other than ADT. Of [fol. 345] course, after divestiture these restrictions as outlined in defendants' proposal would apply to ADT's remaining business in those cities.

B. Remaining Provisions:

With respect to the remaining and relatively minor differences between the two relief proposals, defendant alarm companies concur in the discussion thereof in the brief of Grinnell (pp. 35-41).

Conclusion

The relief in this matter must of course be reasonably adapted to the cure sought. Plaintiff's proposal for divestiture by ADT in a minimum of 48 and possibly 107 cities, coupled with other proposals having utterly unknown effects, is designed not to cure but to destroy.

The defendants on the other hand submit a proposal

which provides for divestiture where appropriate and for adequate and rational treatment of the subjects of contract term and relinquishment of title to equipment in subscribers' premises. These, taken together with such other injunctive provisions of the decree as to which no question is raised, provide relief which is substantially reasonable and curative.

Dated: April 6, 1964.

Respectfully submitted, Matthew W. Goring, Hinckley, Allen, Salisbury & Parsons, Attorneys for Defendants, American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware.

Of Counsel: Bleakley, Platt, Schmidt, Hart & Fritz, Frank A. Fritz, Robert L. Conkling, Frank A. Fritz, Jr., Averill M. Williams, Robert O. Donnelly.

[fols. 346-347] IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES COURT
Boston, 02109

Chambers of Charles E. Wyzanski, Jr., District Judge

May 4, 1964.

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United States v. Grinnell et al Rhode Island C.A. 2785

Gentlemen:

I have your various letters written while I was abroad, including the following: a letter of April 3 from Mr. Fritz, a letter of April 6 from Mr. McInerney, a letter of April 13 from Mr. Story, a letter of April 22 from Mr. Story, and a letter of April 23 from Mr. Fritz.

I shall be glad to hear all of counsel in this case on Thursday, May 28 at 9:30 A.M. in Boston in my courtroom on the 15th floor. Until that session has been held, I will make no order with respect to any phase of the case.

Sincerely, ——, ——.

cc: Hon. Neale D. Murphy.

[fol. 348] IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

C.A. No. 2785

UNITED STATES OF AMERICA,

v.

GRINNELL CORPORATION, AMERICAN DISTRICT TELEGRAPH COMPANY, HOLMES ELECTRIC PROTECTIVE COMPANY, AUTOMATIC FIRE ALARM COMPANY OF DELAWARE

Wyzanski, D. J.

Transcript of pre-trial conference—Boston, Mass., May 28, 1964.

APPEARANCES:

Noel E. Story, Esq. and Hugh P. Morrison, Jr., Esq., Anti-Trust Division, counsel for the plaintiff.

Denis C. McInerney, Esq., Roger T. Clapp, Esq., Gerald Co. Van Cise, Esq., counsel for the defendant Grinnell Corporation.

Frank A. Fritz, Esq., Frank A. Fritz, Jr., Esq., Matthew W. Goring, Esq., Robert L. Conkling, Esq. and Averill M. Williams, Esq., counsel for the defendants American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware.

[fol. 349] The Court. All right. Now the pre-trial conference. United States against the Grinnell Corporation, a great many pending matters of one kind and another, some in the form of motions. I will give the United States a chance to say anything in connection with any pending motion it wishes to press.

Mr. Fritz. May it please the Court, before we begin may I have the privilege of presenting to the Court Mr. Robert L. Donnelly and move his admission to the Bar of this Court. He is a member of the State Bar of New York and is general counsel for one of my clients.

The Court. You are welcome to participate. I don't think I will grant the motion in exactly the terms made but you may participate in this case.

Mr. Donnelly. Thank you very much.

The Court. Now what does the United States press? The secrecy motion is on the other side so you don't have to press that one.

Mr. Story. Well, your Honor, I really have nothing to press here today.

The Court. All right. I will give the other side a chance. Does the other side want me to impose clearance on certain documents here?

Mr. McInerney. Your Honor, we merely requested that [fol. 350] publication of these documents be postponed for some period of time in view of the nature of the offers made therein and the impact their publication would have on both the business of our clients and the employees of our clients. The reasons for this are obvious, I think. Your Honor knows what is in our proposed counter-offer. I don't see any reason why it should not be granted. I must say I didn't quite understand the government's letter with respect to it.

The Court. Do you want to say anything, Mr. Story?

Mr. Fritz. May I say, apropos of that, that we felt due to the state this matter was in that it could prove embarrassing if the matter came to the attention of our competitors. I don't like to get into controversy but Mr. Story's letter indicates rather plainly he felt we had breached a prior arrangement whereby the secrecy would be preserved.

The Court. I am not adjudicating anything on that. The only question is whether I shall in some way impound or hold secret documents which have been filed here. That is the only question that is before me.

Mr. Fritz. I join in that application.

The Court. Do you want to be heard, Mr. Story?

[fol. 351] Mr. Story. Yes, your Honor. I am certain your Honor is aware that in connection with the antitrust laws the Congress back in the early 1900's passed a specific act relating to the antitrust laws called the Publicity and Taking Testimony Act.

The Court. What has that got to do with this?

Mr. Story. Well, your Honor——

The Court. Nothing. Right?

Mr. Story. Well, it has this——

The Court. Nothing.

Mr. Story. Well, I disagree with your Honor on that.

The Court. Show me the statute that relates to it, and then I will apply it.

Mr. Story. I know of no such statute.

The Court. All right. That is all I asked you. Is there any other argument of a non-statutory nature that you are addressing to me? I hear none. I deny the application to impound. I have no private ears in any suit. All right. The next matter.

Mr. Story. Your Honor, in that connection I would like to bring up at this time, because I know your Honor has received some communications in connection with it, the [fol. 352] fact that at the first pretrial conference in this matter the defendants before Judge Sweeney moved the Court to seal the depositions taken in this matter. At that time Judge Sweeney didn't ask for my views on it, but I didn't make any statement in opposition to it because the defendants at that time had taken one or two depositions and it was found that the non-defendant companies were greatly reluctant to disclose any of their business matters, especially their volume of business, which is necessary in a monopoly case. So Judge Sweeney at that time ordered that all depositions in this matter would be sealed. In depositions after that, in an effort to get the witnesses to cooperate and not have to go before a local Federal District Court every time we took a deposition, Mr. Fritz started off and he made the statement in the beginning of the deposition that these depositions had been ordered sealed, that the depositions and the contents of the depositions would not be disclosed to anyone other than the attorneys charged with preparing the case for trial.

That went on for several months, during which time the Government took several depositions which it had noticed. The Government——

The Court. If I understand you correctly, you failed to make any application to Judge Sweeney, and you certainly [fol. 353] never made any application to me, to vacate Judge Sweeney's order, with respect to this matter, and the deponents testified with the representation accurately made to them that these were documents which would not be disclosed except under certain circumstances at a later stage of the trial; is that right?

Mr. Story. Yes, sir.

The Court. That is all I have to hear. As far as I am concerned I am not interested in acting on it now. I assure you that had you made application at an appropriate time to me before any third-party or deponent had testified, I would promptly have taken what I regard as desirable action, but now deponents having testified under an assurance, which you did not seek to have vacated, I am not going to disturb it.

Mr. Story. The only point I was trying to make——

The Court. That is all there is to it. It has to do with third persons and their justified reliance upon an order which you did not seek to have vacated.

Mr. Story. The only thing I am trying to say, your Honor, is that it is my understanding now that some of this information has been made available to officers of the defendants.

The Court. I don't know anything about that. But I am [fol. 354] going to leave the matter as it is because the deponents testified under an understanding which you didn't seek to vacate. Is there anything else? Is there anything other than setting the date for trial?

Mr. McInerney. Your Honor, at our last pretrial conference we discussed devoting this pretrial conference primarily to the question of relief. If your Honor will recall——

The Court. Is there any use in my talking about it? Are you near enough so that I can do anything? Or hadn't I just better hold the trial and get it over with? It is not going to take very long. I know that.

Mr. McInerney. Your Honor, it won't take very long for the plaintiff's case to go in.

The Court: Nor for the defendants' either, I assure you.

Mr. McInerney. Well, if I may respectfully disagree——

The Court. You may disagree but I will decide it.

Mr. McInerney. Well, I would like to point out to your Honor that if we were to go to trial at the present stage of this matter, we would be going to trial on issues far beyond those contemplated by the pleadings in this action [fol. 355] because of what had gone before leading up to this pretrial conference.

If I may go back for a moment, your Honor. The purpose that we had in mind in suggesting this at this time was that the government had completed its pretrial discovery, it was very substantial indeed. There were about

100 depositions taken in about 35 cities. They saw about a half-million of our documents that were produced and reviewed by them. We spent thousands of man-hours in answering interrogatories. And from all this material they culled all of that bulk of evidence down to a fairly, relatively insubstantial amount in comparison to what they had to work with. But the fact is that they have designated about 2,000 pages of deposition testimony, and about 1,300 pages of documents, and that, together with certain stipulations of fact that we have entered into since the last pretrial conference, is to constitute their case-in-chief, because the stipulations eliminated their need for any live witnesses in this case as far as the government is concerned.

So now we felt we were in a posture so that the Court could determine rather readily what the real issues are in this case, and we suggested this conference with two purposes in mind. The first one, quite frankly, was we thought [fol. 356] that if your Honor would indicate the relief that might be appropriate in this case that that would help both sides to come to a better understanding.

The Court. I don't think it would help very much.

Mr. McInerney. Well, your Honor, I think it would help both the plaintiff and the defendants to know what is really at stake here in this trial.

The Court. I assure you that you would not be helped by anything I would say. You would do better to get together with the government rather than run the risk of what I would say from what I have seen. Let me just assure you of that. And I mean every word, and you can underline that four times.

Mr. McInerney. We had in addition to that purpose, your Honor, a purpose that had to do with the possibility that there might be a trial and that this procedure would not result in a consent decree and that was the narrowing of the issues or the elimination of some of the issues in this case.

The Court. The case is set for trial Monday, June 15th, the government to proceed.

Mr. McInerney. Your Honor——

[fol. 357] The Court. There is no use in discussing it with me. I have read enough to know that if I have to decide this case on what I have seen from the government you will not be in a position at this stage to agree to it.

Mr. Story. Your Honor, may I say just one thing. As your Honor knows, the government has turned its entire case over to the defendants. Now the government would like at a very early date the defendants to turn over to us those documents that it intends to use in its case.

The Court. I am going to do nothing except listen to your case beginning the 15th of June.

Mr. Story. Very well, your Honor.

The Court: The trial is to begin on the 15th of June. There will be no delays. Nothing will prevent it except death or serious illness.

Mr. Fritz. Notwithstanding my understanding of what your Honor has just said, may I just ask this question. There are unresolved as between us many, many objections.

The Court. I am sure.

Mr. Fritz. Your Honor is aware of that.

The Court. I know. I am going ahead and hear the case. As far as I am concerned, it is going to be continuously tried until disposed of.

[fol. 358] No delays, postponements or further method of avoiding the impact of this Court. The 15th of June.

Reporter's Certificate to foregoing transcript omitted in printing.

[fol. 359] IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

Civil Action No. 2785

Title Omitted

NOTICE OF MOTION—Filed June 2, 1964

To:

Raymond J. Pettine, Esq.
United States Attorney
District of Rhode Island
Attorney for Plaintiff
Federal Building
Providence, Rhode Island

Sir:

Please Take Notice that defendants Grinnell Corporation, American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware, by their respective attorneys, upon the annexed affidavits of Denis D. McInerney, Esq. and Frank A. Fritz, Esq. sworn to June 1, 1964, the order of this Court dated December 18, 1963, the transcripts of hearings before Honorable Charles E. Wyzanski, Jr. dated December 18, 1963 and May 28, 1964 and upon the pleadings, hereby move the United States District Court for the District of Massachusetts, (Honorable Charles E. Wyzanski, Jr., presiding) to whom the within cause was assigned for all purposes by designation of Chief Judge Woodbury of the United States Circuit Court for the First Circuit, forthwith, for orders (1) vacating the order of the said Court made May 28, 1964 setting the within cause peremptorily [fol. 360] for trial on June 15, 1964; (2) continuing the commencement of the trial of the action for a period of not less than two months in order to allow the said defendants an adequate and reasonable time to complete final trial preparation; and (3) setting forth and narrowing the issues to be tried at the trial of the action;

Please Take Further Notice, that the said defendants request such other and additional relief as will be just in the

premises in order to prevent prejudice to the defendants and to provide a fair trial, and that this Court set the foregoing motion down for hearing upon a day and at a time certain and prescribe what notice shall be given the plaintiff with respect thereto.

/s/ Matthew W. Goring, Esq. Attorney for Defendants, American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware, Industrial Bank Building Providence 3, Rhode Island.
/s/ Robert T. Clapp, Esq., Attorney for Defendant Grinnell Corporation, 260 West Exchange Street, Providence, Rhode Island.

Of Counsel: Bleakley, Platt, Schmidt, Hart & Fritz 120 Broadway, New York, New York 10005

Of Counsel to Grinnell Corporation: Cahill, Gordon, Reindel & Ohl, 80 Pine Street, New York, New York 10005.

[fol. 361] Upon the prayer of the foregoing motion that the same be assigned for hearing, Ordered:

Said motion is assigned for hearing before me at M. June —, 1964, notice of this order to be given the plaintiff forthwith.

——, ——, U.S.D.J.

[fol. 362] ATTACHMENT TO NOTICE OF MOTION

THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

Civil Action No. 2785

UNITED STATES OF AMERICA, Plaintiff,

v.

GRINNELL CORPORATION, AMERICAN DISTRICT TELEGRAPH COMPANY, HOLMES ELECTRIC PROTECTIVE COMPANY, AND AUTOMATIC FIRE ALARM COMPANY OF DELAWARE, Defendants.

AFFIDAVIT

STATE OF NEW YORK,
County of New York, ss:

Denis G. McInerney, being duly sworn, deposes and says:

1. I am an attorney at law and a member of the firm of Cahill, Gordon, Reindel & Ohl, co-counsel for defendant Grinnell Corporation with Roger T. Clapp, Esq., Grinnell's General Counsel and its counsel of record.

2. In the course of a pretrial conference held herein on December 18, 1963, Government counsel advised the Court that they had almost completed their selection of documents to be offered in evidence, which they would identify for defendants, and that the parties had agreed they would then attempt to resolve any objections to admissibility of documents or deposition pages among themselves. Because it was expected that some objections would remain which the Court would have to resolve, Government counsel suggested that a further pretrial conference be scheduled in about two months' time, at which the [fol. 363] Court would rule on objections to the admissibility of documents to be offered by plaintiff so that this would be out of the way in advance of trial (Tr. of Dec. 18, 1963, p. 10), although no trial date was mentioned at that conference.

3. Defendants then suggested that, before the Court ruled on questions of admissibility, there should be a pretrial conference devoted to discussing what relief would be appropriate if plaintiff were to prevail, as recommended

in the "Handbook of Recommended Procedures for the Trial of Protracted Cases", adopted by the Judicial Conference of the United States in March of 1960, pp. 46-47, 25 F.R.D. 351, 398. This procedure was suggested in order to narrow and define the issues to be tried before any rulings on relevancy and materiality of documents were made (Tr. pp. 15-16). In addition, we had reason to hope that such a conference might result in a consent decree. The Court adopted that suggestion (Tr. pp. 21-24) and, after the parties had agreed upon the dates, entered an order setting up a briefing schedule for issues pertaining to relief. In accordance with that order, the Government served and filed a proposed form of judgment on February 14, 1964, along with a brief stating its views as to the liability of the defendants. The defendants submitted their briefs on relief and their proposed changes in plaintiff's proposed form of judgment on April 6, 1964. The Government had an opportunity to reply, but chose not to exercise it.

4. The Government's proposed form of judgment goes far beyond the judgment contemplated by the complaint's prayer for relief, and in fact is inconsistent with the complaint. For example, the complaint prays "that defendant Grinnell be required to dispose of all of its capital stock interest in defendant ADT" (Prayer for Relief ¶ 3). [fol. 364] Since the complaint describes in detail Grinnell's interests in the other two defendants (Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware) but does not request divestiture of those interests, we naturally assumed that the Government did not want to divest Grinnell of these two subsidiaries as well. However, in response to the Court's order of December 18, 1963, the Government proposed a decree which would divest Grinnell of all three of these subsidiaries (§ IX of Government's proposed decree). Moreover, plaintiff's proposed decree would perpetually enjoin Grinnell from acquiring any central station business except in a community where no other defendant is operating, and then only with Court approval on an affirmative showing by Grinnell "that such acquisition will not substantially lessen competition" (§ V(C) of Government's proposed decree). In other words, the Government has now decided that it wants to deprive Grinnell of all of its central station interests and

restrain it from even lawful competition in that field, despite the complaint's clear implication that Grinnell will be allowed to retain its stock in Holmes and AFA.

5. To take just one other example, paragraph 6 of the prayer for relief in the complaint requests:

> "That the Court enter appropriate orders to assure that each existing and future subscriber *may have title* to central station protection systems installed on their premises when defendants ADT, Holmes, or AFA have secured the cost to them of the equipment plus labor plus overhead expense." (Emphasis added)

However, instead of giving subscribers the option to take title to defendants' equipment, the Government now seeks to *force* title on subscribers, whether they want it or not, and even though (under the rules of insurance premium rating organizations throughout the country) by taking [fol. 365] title subscribers would lose much of their insurance premium discounts. In addition, though again the complaint gives no warning of this, plaintiff now wants to expropriate defendants' interests in any equipment presently installed in the premises of subscribers, and to turn over title to that equipment to those subscribers without compensating defendants for it. Thus, Section VII of the Government's proposed decree states as follows:

> "Defendants are each ordered and directed:
>
> "(A) To assign to each service customer all right, title and interest to equipment installed or to be installed on the premises of the customer, without further charge as to existing installations and, as to future installations, for such defendant's regular installation charge."

6. If the Court should permit plaintiff to inject these new issues now, even though they are clearly not contemplated by the prayer for relief in the complaint, defendants would have the burden of attempting to gather and introduce evidence to meet them. It is respectfully submitted, however, that nothing in the depositions or documents plaintiff has designated as its case in chief could support such drastic relief (even if this evidence should be uncon-

tradicted) and that plaintiff's attempt to broaden the issues herein at this juncture should not be countenanced.

7. The Court's order of December 18, 1963 stated that the next pretrial conference would be held "for the primary purpose of discussing the relief which would be appropriate in the event plaintiff prevails", and that the date would be fixed thereafter. By letter dated May 4, 1964, the Court advised us that the date of that pretrial conference would be May 28, 1964, and all parties appeared on that date. However, instead of discussing plaintiff's proposed form [fol. 366] of judgment, or narrowing the issues, the Court peremptorily set this case down for trial commencing June 15, 1964, without consulting counsel for any party.

8. It is simply not possible for defendants to adequately prepare for trial on two weeks' notice in this case. By any standard, this is a "big case". It not only involves the future of substantial corporations rendering important services by protecting life and property, but it involves a great mass of documentary material and testimony. Over 100 depositions have been taken, the transcripts of which total some 11,500 pages. Over a half million documents have been produced to the Government. In addition, hundreds of pages of interrogatory answers have been compiled by the defendants at plaintiff's request and at great expense, in terms of both time and money.

9. To the best of my knowledge, defendants had no reason to suppose, prior to the Court's announcement on May 28, that this case might possibly go to trial earlier than the Fall of this year. In fact, defendants' attorneys were so confident that it would not that both Mr. Clapp and I had made reservations for trips abroad, commencing June 19 and June 20, respectively; Mr. Clapp and his family were to tour the Scandinavian countries and I and mine were taking a boat to Nassau.

10. Much of our energies on this case in the past six months have been devoted to conferences, factual investigation and legal research concerning the unique relief proposals that the Government has made herein, all in preparation for the pretrial conference on relief that the Court had ordered. Now that we are faced with a trial date much earlier than any of the parties had in mind, it will be necessary for us to devote every moment we possibly can to

[fol. 367] trial preparation in order to adequately represent our clients. But even by doing so, two weeks' time is not sufficient.

11. Accordingly, we respectfully submit that the Court should (a) reconsider the June 15 trial date and allow the defendants at least two months for final trial preparation, and (b) clarify the issues to be tried herein by an order limiting the issues to be tried herein to those framed by the pleadings for the purpose of determining whether the relief requested in the complaint (and not any relief inconsistent therewith) should be granted.

Denis G. McInerney.

Sworn to before me this 1st day of June, 1964 [Seal.]

Anthony S. Picciolo, Notary Public, State of New York, No. 03-3095368, Qualified in Bronx County, Certificate Filed in New York County, Commission Expires March 30, 1965.

[fol. 368] ATTACHMENT TO NOTICE OF MOTION

Civil Action No. 2785

UNITED STATES DISTRICT COURT, DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA, Plaintiff,

v.

GRINNELL CORPORATION; AMERICAN DISTRICT TELEGRAPH COMPANY; HOLMES ELECTRIC PROTECTIVE COMPANY; and AUTOMATIC FIRE ALARM COMPANY OF DELAWARE, Defendants.

AFFIDAVIT

STATE OF NEW YORK,
COUNTY OF NEW YORK, ss:

Frank A. Fritz, being duly sworn, deposes and says:

I am a member of the firm of Bleakley, Platt, Schmidt, Hart & Fritz, counsel for the defendant alarm companies in this matter.

For the reasons set forth herein, I respectfully submit this affidavit in support of said defendants' application for

a postponement of the trial of this action for a reasonable period beyond June 15, 1964.

First: On December 18, 1963, a pretrial hearing in this matter was held. A copy of the transcript of that hearing is attached, marked Exhibit A.

As these minutes clearly disclose, two major subjects were considered:

(1) The future disposition before trial of objections to deposition material, objections to documents, the resolu-[fol. 369] tion of all such objections either by agreement of counsel or by Court ruling, the method of excerpting the deposition material for use upon the trial, etc.

(2) The future consideration by the Court, after submission by the parties of proposals and briefs, of appropriate relief in the case upon the assumption of liability.

Item 2 was expressly made the subject of an order of this Court dated December 18, 1963, attached hereto, marked Exhibit B. The first mentioned item, however, was to be held in abeyance, or so it seemed to counsel, until the disposition of the subject of the order of December 18th, i.e., the question of relief.

Believing that the inquiry into the relief aspect of the matter to be of great importance, as did the Court (Exhibit A, p. 17), (see also Handbook of Pro-Recommended Procedure for the Trial of Protracted Cases, p. 46), I and my associates in the ensuing period devoted many weeks to the consideration of the Government's brief and proposals, conferring with our clients with respect thereto and counter-proposals, examination of documents, depositions and financial data, and in the preparation of a brief and proposed decree which were submitted to this Court in behalf of defendant alarm companies on April 6, 1964. Thereafter, by letter dated May 4, 1964 the court advised that a hearing would be held on May 28th. Much time was spent by me and my associates in the assembly and study of supporting documents and data and in the preparation for the presentation of defendants' position at that hearing. [fol. 370] The final paragraph of this Court's order of December 18, 1963 (Exhibit B), reads as follows:

> "On a date subsequent to April 13, 1964, subject to the Court's convenience, a Pre-Trial Conference shall

be held herein for the primary purpose of discussing the relief which would be appropriate in the event plaintiff prevails."

Nevertheless at the hearing of May 28, 1964, there was no discussion of items of relief. A summary and peremptory direction was made without consideration for the uncompleted pre-trial procedures which had been contemplated by the parties or for the situation of counsel or witnesses, that the trial proceed on June 15, 1964. A transcript of that hearing is attached hereto, marked Exhibit C.

I am sure that whatever prompted the Court to the action taken, it was thought to be soundly based and was not induced by any intention to curtail the defendants' right to fair, orderly, just and due process. However, the allowance of but two weeks for final preparation for the trial of this case constitutes, in my opinion, a denial thereof.

Because of the hope of settlement or, at least, a narrowing of issues, final steps of trial preparation were deferred lest the pre-trial hearing render same unnecessary and so that defense counsel could concentrate their efforts on the question of settlement. I had deferred, pending the resolution of objections to depositions and documents and other pre-trial procedures, the final preparation of witnesses, our own final selection of documents (which by [fol. 371] stipulation were to be submitted fifteen days in advance of the trial), preparation of charts, data, etc., because I felt that the issues would be more clearly drawn and certain areas of proof limited by the completion of the pre-trial procedures. Certain it is, that the contemplated pre-trial procedures in this case (Exhibit A) have not been held and equally true is it that the defense had anticipated—and we think rightfully so—that they would be before a trial date was set. While it may be, as the Court indicated at the conclusion of the hearing on May 28, (Exhibit C, pp. 8-11), that the trial will proceed notwithstanding the noncompletion of these pre-trial aspects of the case, the fact is that the defendants have relied upon their completion before trial and are wholly surprised and disadvantaged by the suggestion that they be forgotten and the trial gotten on with. The direction of the Court to proceed to trial on June 15, 1964 imposes an impossible

burden and, if adhered to, will result in serious prejudice to the defendants.

So far as I am aware, a trial on two weeks notice of a Section 2 Sherman Act case involving nearly one hundred depositions, thousands of documents and multiplicity of interrogatories, etc., is unique in the annals of antitrust litigation.

Second: May I add that I was so stunned at the hearing of May 28, 1964 to find not only no discussion of the items of relief but a summary relegation of the matter for trial on two weeks notice, that I did not have the presence of mind to suggest to the Court, as it would have well understood, the existence of other professional commitments on [fol. 372] my part. For example, on April 22, 1964, I was directed by Surrogate John B. Bennett (Nassau County, New York State), to proceed on June 10 and 11, 1964 with the trial of a proceeding involving validity of an antenuptial agreement in connection with an estate amounting to approximately $3,500,000, a matter of great importance to my client. This trial also involves necessary preparation work. The dates above mentioned for this trial were set with my consent, but I think it is fair to say that I had little reason to think, in view of the matters hereinabove set forth, that there would be a conflict between that trial and the trial of this case.

Another matter in which I am defense trial counsel and which will be reached for trial in June, is *Smith* v. *T. Hogan & Sons, Inc.*, pending in the United States District Court for the Southern District of New York. Thus, some substantial part of my time during the next two weeks will be required by these matters.

Third: Further, at this writing, I do not know whether all necessary witnesses will be available at the time designated by this Court for trial. A quick survey, however, indicates that at least one material witness, namely, a partner in the accounting firm of Price Waterhouse & Company is on vacation in Europe and will not be available. There may be others.

Fourth: In the light of the vital issues in this action, namely, charges of violations of Sections 1 and 2 of the Sherman Act, a large number of depositions, thousands

of documents and other evidence involved in this case and [fol. 373] the circumstances above set forth, I respectfully submit that the direction of this Court to proceed to trial on June 15, 1964, if adhered to, would result in serious prejudice to these defendants. It may be noted that this action was begun in April of 1961 and has been diligently pursued by all parties. Not even the Government has suggested at any time that trial of this case be set down on two weeks notice. The Court's determination on May 28th to this effect was not on the Government's application. As a matter of fact, the transcript (Exhibit C, p. 10) indicates that the Government would like an opportunity to examine the documents which the defendants intend to use. These documents, as previously indicated herein (p. 4 supra), were to be submitted to the Government by the defendants fifteen days before the trial (Stipulation No. 1). Certainly no prejudice would accrue to the Government by reason of the postponement of this trial for the two months period requested.

Fifth: The affidavit of Denis G. McInerney, counsel for defendant Grinnell, hereto attached, points out (Pars. 4-6 inclusive) apparent efforts by the Government to introduce new issues at this late juncture. In the interests of brevity, I adopt the statements contained therein and concur in the request for the limitation of issues.

I respectfully pray, therefore, that the Court reconsider its decision to proceed with this trial on June 15, 1964 and to accord to the defendants a reasonable period of not less than two months for that purpose and that a date be fixed in accordance with this request and the Court's convenience and that the issues to be determined be limited to those raised by the pleadings only.

Frank A. Fritz.

Sworn to before me this — day of June, 1964 [Seal.]

Averill M. Williams, Notary Public, State of New York, No. 31-4278450. Qualified in New York County. Commission Expires March 30, 1965.

[fol. 373a] CLERK'S NOTE:

Exhibit A to the Affidavit of Frank A. Fritz—"Transcript of pre-trial conference held in USDC for the District of Massachusetts, Boston, December 18, 1963" is omitted from the record here. It is printed at page 179 supra.

[fol. 373b] CLERK'S NOTE:

Exhibit B to the Affidavit of Frank A. Fritz—"Order of Wyzanski, J., dated December 18, 1963" is omitted from the record here. It is printed at page 209 supra.

[fol. 373c] CLERK'S NOTE:

Exhibit C to the Affidavit of Frank A. Fritz—"Transcript of pre-trial conference held in USDC for the District of Massachusetts, Boston, May 28, 1964" is omitted from the record here. It is printed at page 348 supra.

[fol. 374] File Endorsement Omitted.

[fol. 375] IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

RLW:BJR:NES
60-339-1

June 2, 1964.

Honorable Charles E. Wyzanski, Jr.
United States District Judge
District of Massachusetts
United States Courthouse
Boston, Massachusetts

Re: United States v. Grinnell Corporation, et al. Civil No. 2785 (D. Rhode Island)

Dear Judge Wyzanski:

In an effort to save court time in the presentation of the Government's case in the above-captioned matter, it is suggested that arrangements be made to have the exhibits Plaintiff intends to offer into evidence marked for identification by the court reporter prior to the commencement of the trial of the case on June 15, 1964. This procedure has been recommended in the Handbook of Recommended Procedures for the Trial of Protracted Cases Adopted by the Judicial Conference of the United States (p. 57).

As Your Honor knows, a complete designation of documents upon which the Plaintiff will rely in its case-in-chief was filed with the Court and served upon the defendants on January 29, 1964.

If this suggestion is approved by the Court, a member of the Government trial staff will be available at the Courthouse in Boston, Massachusetts, with the documents on Friday, June 12, 1964, or such other date as Your Honor desires.

[fol. 376] Please advise whether this is approved by the Court, and if so, the time and place set by the Court.

Sincerely yours, Robert L. Wright, Acting Assistant Attorney General, Antitrust Division. By: Noel E. Story, Attorney, Department of Justice.

cc: Raymond J. Pettine, Esquire, United States Attorney, 211 Federal Building, Providence 3, Rhode Island. Mat-

thew W. Goring, Esquire, Hinckley, Allen, Salisbury & Parsons, Industrial Bank Building, Providence 3, Rhode Island. Roger T. Clapp, Esquire, Grinnell Corporation, 260 West Exchange Street, Providence 1, Rhode Island. Denis G. McInerney, Esquire, Cahill, Gordon, Reindel & Ohl, 80 Pine Street, New York 5, New York. Frank A. Fritz, Esquire, Bleakley, Platt, Schmidt, Hart & Fritz, 120 Broadway, New York 5, New York.

[fol. 377] [File Endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

C.A. [R.I.] No. 2785

[Title omitted]

Wy[illegible]ki, D.J.

Transcript of hearing on motions—Boston, Massachusetts, June 3, 1964

APPEARANCES:

Noel E. Story, Esq. and Hugh P. Morrison, Jr., Esq., Antitrust Division, Department of Justice, counsel for the plaintiff.

Denis G. McInerney, Esq., counsel for the defendant Grinnell Corporation.

Frank A. Fritz, Esq. and Matthew W. Goring, Esq., counsel for the defendants American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware.

[fol. 378] The Court. United States versus Grinnell, et al. Who wants to speak on the Motion?

Mr. Fritz. I beg your pardon, sir?

The Court. I said: who wants to speak? I guess you do.

Mr. Fritz. I would like to. As your Honor knows from the papers that were filed yesterday, this is a Motion by the defendants asking your Honor to vacate the decision made on May 28th to set this case for trial on June the 15th, and also we are asking for an order further limiting the issues on the trial.

Now I would like to address myself to the first branch of this Motion very briefly and ask Mr. McInerney, if your Honor would be good enough, to talk about the question of limitation of issues.

We have come up here so promptly after Thursday be-

cause, frankly, we are very graved and disturbed by the order of this Court setting this case down for June the 15th. We think it constitutes a very serious impairment of our position.

May I take your Honor's mind back to December 18, 1963, and which is reflected in the transcript attached to my papers marked Exhibit A. Very briefly that transcript indicates that we all came here to discuss two segments [fol. 379] of this case. The first dealt with pretrial procedures which Mr. Story outlined, which had been the subject of discussion between him and myself and our respective staffs on the prior day.

It covered matters of how we were going to handle the voluminous objections to deposition material which had been selected by both parties, the objections to documents, the designation of documents, and how they were going to be resolved, and if we could not resolve them among ourselves how they could be resolved by the Court.

Then we proceeded from that to the other aspect of the case, namely, the question of submitting to your Honor our respective proposals concerning relief and briefs in support of them, having a two-fold purpose in mind; one, perhaps to limit the issues, if that was the best we could do, and the other to see whether or not we could arrive at an adjustment of the case, because we had spent so many months among ourselves with government counsel trying to reach that result. It seemed to me that at that hearing your Honor embraced the latter suggestion with, if I may use the word, enthusiasm, and your Honor directed that we put that in the form of an order, which we did on that day.

[fol. 380] That order, as you know, provided for nothing except the treatment of the question of relief, and it laid out a schedule for briefs and a schedule for proposals on both sides.

We thought, frankly, that that was a matter of terrific importance in this situation, and the assignment of that aspect of the case to us was one that became an engrossing matter with us. We devoted our full time to it, myself and my staff, and I think your Honor having the briefs of defendants will see that they reflect a great deal of indus-

try and a great deal of work with regard to some complicated questions and which involved a great many discussions with our people regarding the extent of relief.

And so we came in here and attempted to follow up that order, in the best of good faith, with the sincere hope that we were going to make some progress. We felt there were some things that the government was asking in this case that were beyond the pale of an antitrust case.

For example, I thought that the national account demands that the government made had no antitrust implications. I thought that the pricing they sought to get in a non-competitive area to be governed by prices [fol. 381] in a competitive area, for example, was another one, and there are others.

I thought that that might lead at the very least to a minimization of the amount of work that we would all have to do on the trial of the case.

Your Honor, having read the briefs and proposals, reached the conclusion, and that is not the subject of any criticism on my part, your Honor exercised judicial judgment in deciding, as I read the transcript of last week, that the parties were so far apart that you Honor felt that there was not anything that could be accomplished in that quarter. That was a matter of great regret to all of us.

Nevertheless, may I point out that the order of December 18 did not concern itself whatever with the question of the disposition of pretrial matters. That was left, as I saw it, and I think other defense counsel and possibly government's counsel, that was left in abeyance pending determination of our relief aspects and submission of briefs to this Court on that subject.

Now nevertheless, on November 28th your Honor said very plainly that the relief aspects of this case no longer concerned the Court, so far as ability to do anything about it, and your Honor set the case down for the 15th of June. [fol. 382] That left us in the position where we had still a lot of work to do with regard to this trial, which we had hoped might be eliminated in whole or in part by the procedure we had engaged in for the prior five or six months.

This matter of objections to testimony, depositions and documents is not a purely technical one nor is it purely

mechanical. There is a great deal of hearsay material, for example, that has been selected in these deposition and documents. If I have to call witnesses from various parts of the United States to meet it, I will have to have them here. If there had been rulings or an agreement on them, or the time to do it, and those objections no longer existed, I would not have to go to the point of calling witnesses.

And so we had to defer a certain amount of our final preparation, if I may put it that way, until these pretrial procedures had been resolved. Now we find ourselves in the position where it is almost impossible to do it in a period of two weeks.

I would like to say to your Honor, and I think your Honor may have observed it, that this case has been pursued with diligence by both parties. This case started in April of 1961. We began our depositions in July of that [fol. 383] year, and there has been no delay that I am conscious of that was imposed by one party on the other, except for this period from December to now, when we were chiefly concerned with this question of relief.

And so, frankly, I find it difficult to see why there is this great urgency, that the matter must be disposed of on the 15th of June. I am not asking for any great length of time. I am not seeking delay for delay purposes. But I am asking that your Honor, instead of giving us two weeks to get ready to come here to try the case, to give us two months, and I think that that is a reasonable request.

Frankly, I am not supposed to be an expert in this field of antitrust, but I have done a great deal of reading and I have done some work of this kind, and I have never seen a monopoly case, a Section 2 case, set down for trial with a volume of material as we have here on two weeks' notice. It strikes me as a little unusual.

Now may I say this from a personal point of view and it also weighs upon my clients' interests. When your Honor made the announcement last Thursday that this case would go to trial on June 15th and that there would be no further [fol. 384] discussion of relief for one of the few times in my life in this Court Room I was speechless, and I should have said to your Honor, as I know your Honor would have understood, that I am not in the fortunate or unfortunate

position of Mr. Story, who has one client, as I understood him to say, one case. I have a number of clients and I have a great many interests to defend.

And at the time your Honor made this pronouncement last Thursday I frankly did not have it in my mind that I have been directed to go to trial in the Surrogate's Court, Nassau County, on the 10th and the 11th of June, and I have got to prepare for that. I am in the District Court, as my affidavit shows, in another case in June, in the Southern District of New York.

One of my partners called my attention yesterday to a third matter, an estate matter at the end of June, which I had completely forgotten about. I do not play it quite that close

And so, those are matters that have an impact upon my client in this case because I have got to do something about the protection of the interests of these other clients.

[fol. 385] Now then finally we come down to the witness situation. I made a quick or had a quick telephone survey made on Friday as to the whereabouts of some people I want to use at this trial. I find that one Price Waterhouse partner, who has been working on some of this material, is in Europe and he won't be back in time. Yesterday I discovered that the economist, with whom we have been working and intend to call, will not be available until the end of June. I have not got that in my affidavit because I did not know it at the time I drew the affidavit. I drew this on Friday morning, with some revisions coming up finally on Monday. And so, for all of these reasons I am asking your Honor to be kind enough to take all of these things into consideration and to give us reasonable opportunity so that we can feel that we as counsel have not been derelict in protecting our clients' interests and that we had not improperly relied upon the settlement period not to do the final preparation work for this trial, which we could have done, I suppose, concurrently with this, but it did not seem right to impose that burden on the clients, if there was some hope, as we sincerely thought there was, of making some progress.

The Court. Mr. Story? I assume nobody else wants to [fol. 386] say anything on the Motion with respect to delay. Or do you want to, Mr. McInerney?

Mr. McInerney. No, thank you, your Honor. I will sincerely join in everything that Mr. Fritz has said.

The Court. All right.

Mr. Story. First of all, your Honor, I intend to speak very briefly. I would like to correct the record. We have three cases instead of one, your Honor, and Mr. Morrison and I have been pursuing all three of them vigorously.

In that regard, your Honor, I had an opportunity to glance at the papers that were submitted to the Court starting about three minutes before your Honor came into the Court Room, and I noticed that——

The Court. Do you want more time?

Mr. Story. No. What I have to say I can say right now, your Honor.

The Court. All right.

Mr. Story. One of the reasons proposed by the defendants was to the effect that some of counsel had planned a vacation. I would like to state for your Honor's information that I have not had a vacation in three years. I lost my entire annual leave last summer.

[fol. 387] The Court. Do you need a lawyer?

Mr. Story. I think so, your Honor.

Mr. Fritz. Could I just say that I and my staff are lined up with Mr. Story, too. We haven't had a vacation in the last three years.

The Court. You ought to be a Judge; it's much better.

Mr. Story. First of all, your Honor, I would like to let your Honor know we oppose vigorously this motion. I think that the reason Mr. Fritz has stated here today as a reason why the Court should vacate its order is completely devoid of merit. I would like to summarize some of the things that have happened in this case and to bring you up to date on what has actually occurred.

As your Honor knows, this case was filed over three years ago. Now beginning shortly after the case was filed, the defendants undertook a very vigorous discovery program. In fact, your Honor, I know of no such extended program of discovery in any other antitrust case that I am aware of within the last few years or recent years.

Now in accordance with schedules set by your Honor over a year ago, the defendants have had the entire evidentiary presentation that the government intends to in-

[fol. 388] troduce into this case since mid-November. Again, your Honor, in accordance with your order, by at least February the 1st the defendants have had our trial brief in which we have clearly stated the issues. We have quoted extensively from their own documents.

All of this talk about clarifying the issues, as far as I am concerned, the government has already clarified them, briefed them and detailed them and went into great deal for them.

I would like to call your Honor's attention to the fact that over a year ago, when your Honor was making out a schedule for the conclusion of discovery in this matter, your Honor at that time instructed the government to turn over its documents, witnesses and so forth, and tentatively set this case for trial in early November, a year ago. Now certainly that ought to be enough notice to these defendants so that they would have been prepared.

Now, sir, Mr. Fritz spoke at length about the objections. It is true that back in December I did propose to your Honor that each side exchange objections to evidentiary matters which we intended to introduce into Court. Since that time we have received their objections to the testimony in the depositions.

[fol. 389] I must say, your Honor, that Mr. Morrison and I spent long hours studying those objections. First of all, there are so many of them. There are two or three to each page. And ninety-nine per cent of them are so unfounded that I think it would be a complete waste of time for us to try to get together with them. Recently they have submitted their objections to our documentary evidence. The same would apply.

Now, as far, your Honor, as any delay in this case is concerned, with the further possibility of settling the case, I think that would be a complete waste of time. For over three years, and starting and continuing for about four months before this case was filed, extensive consent decree negotiations have been entered into. Literally days have been taken up on this matter. And the parties are further apart now than we were some time ago. So I think it is a complete waste of time in that regard.

Now, lastly, your Honor, I would like to bring up one other thing, which I think is the most important reason

why this case should go to trial as quickly as possible. The reports that I have from the field for the little, small, weak competitors of these defendants—this case was filed [fol. 390] over three years ago—it is my information from the field that what I call predatory practices have increased intensely since that time, and I think it behooves all of us, your Honor, to bring this case to a trial and get some remedies or get it disposed of just as quickly as possible. That is all I have to say, your Honor.

The Court. The Motion to Delay is denied. The trial will begin, as I stated, on the 15th of June.

Mr. Story. Your Honor, there is one further thing. I wrote your Honor a letter on Monday. I don't know whether you received it or not.

The Court. No. I wish you would undertake to reform the mail——

Mr. Story. Sir?

The Court. I wish you would undertake to reform the mail procedures in the Department. It takes forever to get any communication out of you, either originating with you or responding to me.

Mr. Story. That is correct, your Honor. It is four or five days before I get it, but I can't do anything about that.

The Court. I know.

Mr. Story. The suggestion I would have to make, your Honor, is that at the end of next week, and I would [fol. 391] suggest Friday, that we meet with your Clerk and have the documents in this case marked for Identification so as to save time.

The Court. May I suggest to you that the best way for you to do that is to come up by agreement with the other side and go through the documents and identify the documents but nothing more than identifying the documents, and giving them numbers. And there is no suggestion that I am going to rule on their admissibility at that time. But it would be quicker to refer to them by numbers.

You can send up a young clerk from the Department of Justice and the defendants can send up the youngest boy they have got around. It is only a mechanical matter of marking them for Identification. There is no commitment by anybody either to introduce them or to waive objection or anything else. It is just for ready reference.

Mr. Story. That is right, your Honor. That is my suggestion.

The Court. Yes. I think that is a good idea. Anybody, even a secretary can do it from the office. It does not require anyone of any special competence.

Mr. Story. There is one other matter of procedure, [fol. 392] your Honor. On the depositions as I mentioned one other time, some of these depositions run to 300 or 400 pages. The government has only designated some 20 to 30 pages and the defendants have cross-designated a few pages.

In an effort to go to trial at this time my suggestion would be, as far as the introduction of deposition transcripts into evidence, would be, and as far as the government is concerned we have already filed a page and line designation of each of those depositions with the Court, and it is my suggestion for the convenience of the Court that the Court reporter be allowed to take those references and copy from the original depositions those portions so that your Honor, when you read it, you will have everything in three or four volumes rather than have a stack of depositions.

The Court. Why don't you have the Department of Justice do that?

Mr. Story. I suggested that at one time, your Honor, but I am running out of time.

The Court. Well, it is much easier for the Department of Justice to do that and have it verified by defendants counsel and then you submit it that way. It would be much easier.

[fol. 393] Mr. Story. That is what I suggested in December, your Honor. I am afraid that I may not have time. Secretaries are on vacation.

The Court. Well, there are all kinds of mechanical aids at just as cheap rates as here. It is no cheaper to have it done by the Court reporter here, not a penny cheaper, and I am sure that Mr. Duffey is not looking for that kind of business.

Mr. Story. I will do everything I can to have that done, your Honor.

[fol. 394] The Court. Good. Do it in Washington and have it checked.

Mr. Story. Very well, your Honor.

The Court. All right. By the way, you are going to want daily copy, gentlemen, when the trial begins?

Mr. Story. Your Honor, as far as the government is concerned, we will not require daily copy until——

The Court: I assume the defendants will want daily copy?

Mr. Fritz. Yes, your Honor.

Mr. McInerney. Yes, your Honor.

Mr. Story. During which time the live witnesses are on the stand the government will want daily copy.

The Court. You will have to make arrangements now with Mr. Duffey because he has got to make arrangements to get assistants.

Mr. Story. Very well, your Honor.

The Court. I understand the defendants are going to want daily copy anyway; is that right?

Mr. Fritz. That is correct.

The Court. You tell Mr. Duffey how many copies you want so he is able to make all the arrangements.

Mr. Story. Very well, your Honor.

[fol. 395] Mr. McInerney. May I be heard, your Honor?

The Court. Yes.

Mr. McInerney. Your Honor's ruling on the first branch of our motion makes the second one even more serious as far as we are concerned. That motion is to limit the relief issues to be tried herein to those raised by the pleadings so as to eliminate what we consider the extraneous issues raised by the government's proposed judgment herein.

The purpose of this is two-fold. I don't need to remind your Honor that the public policy favoring settlement of litigation has been embodied in Section 5 of the Clayton Act and that consent decrees are eliminated from the prima facie effect of Section 5. So that Congress has in effect given defendants the right, if you will, to capitulate to government demands.

The Court. Yes. I can't understand frankly why you don't realize that you have forced me to look at the documents in this case, which I dislike doing in advance of trial. You have invited me, therefore, into what I regard as, from your point of view, a rather undesirable situation. I think I made that clear at the beginning. I have told you that, forced by you to look, my views are more extreme than

[fol. 396] those of the government; and I have also made you realize that if I am required to make Findings and reach Conclusions I am opening up third-party suits that will make, in view of the size of the industry, the percentage of people involved higher than in the electrical cases. Is that clear?

Mr. McInerney. Yes, your Honor. I would like to make clear from the defendants' point of view, your Honor, that your Honor's statement seems to give some status to government demands that are far beyond what the complaint requests.

The Court. I am not going to engage in any bargaining or discussion with you. I am not going to limit anything at this stage, not a thing.

Mr. McInerney. May I just point out two things, your Honor. We do not believe it is consistent either with the Congressional policy of permitting defendants to capitulate to the government demands, which must be the demands in the Complaint, nor consistent with principles of fair play to permit the government to raise the stakes just before the case goes to trial.

The Court. It isn't just before. Now anyone who looks at this record will say that Mr. Story did not exaggerate by one jot the situation. I have been patient beyond my [fol. 397] nature, and all I can tell you is that, so far as I am concerned, you are now going to experience what other litigants experience in this Court: justice which I hope is fair, is prompt, is thorough and leaves few shreds for others to worry about.

Mr. McInerney. I respectfully disagree both with your Honor's statement and Mr. Story's statement to the effect that it is not at the last minute. Mr. Story says that he clarified the issues over a year ago, and this is not so with respect to the relief requested. We knew that some of these demands for relief would be made but not all of them.

The Court. That makes no difference. I determine the relief. I don't think you need worry about the government. If this case is tried, I won't even ask anyone else to draw the decree. I will do exactly what I did in the United Shoe case, which is I will hand down on one day the Findings, the Conclusions, the Opinion and the Decree. I do not follow the practice of allowing litigants in my Court

to do the Judge's business of writing the decree. Is that clear?

Mr. McInerney. Yes, your Honor. But we had thought that when the complaint requests certain specific relief [fol. 398] and when it says, for instance, that a corporation owning three other corporations or a controlling interest in them is to be divested of one, if the government prevails, that that is wholly inconsistent with requesting divestiture of all three, for instance, or when it says that subscribers may have title, will the Court permit subscribers to take title?—then to insist that subscribers must be forced to take title is inconsistent with that prayer. And so, we are faced with a new set of demands in effect from those that are in the Complaint.

The Court. May I again say that the government will not write the decree; I will write it. And you will engage in no bargaining with me now or later. Is that clear?

Mr. McInerney. Yes, your Honor.

The Court. Thank you.

Mr. McInerney. I had intended to point out several different instances in which the Complaint was inconsistent with the government's present position. I take it from your Honor's remarks that that would be to no avail particularly.

The Court. I don't care if you and the government get together on the decree, but let me make it one hundred percent clear that if I try this case I will write the decree [fol. 399] neither telling you in advance nor at an intermediate stage or anywhere else necessarily what form my judgment will take. I will do exactly what I did in the Shoe Case. And if you need to find out what I did look at the record.

Mr. McInerney. I know what your Honor did in that case. And I am sure that your Honor will not slavishly follow the government's draft of a proposed decree here.

The Court. I am not bargaining with you or with the government. I am not in the business of single or collective bargaining. I am a Judge, and you will learn what that means if you want to.

Reporter's Certificate to foregoing transcript omitted in printing.

[fol. 400] IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

Civil No. 2785

[Title omitted]

ORDER June 4, 1964

Wyzanski, D. J.

The motion of the defendants filed on June 2, 1964 is denied. The motion of the defendants to limit the relief available to the Government is denied,—the Court itself when it makes its findings of fact and conclusions of law will frame the relief, and accepts no limitations except those appropriate to judicial action; it refuses to bargain with anyone with respect to how the Court will exercise its judicial power.

——, ——, D.J., United States District Judge.

[fol. 401] IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES COURT
Boston, 02109

Chambers of
Charles E. Wyzanski, Jr.
District Judge

June 4, 1964.

Noel E. Story, Esq.
Department of Justice
Washington, D.C.

Neale D. Murphy, Esq.
Clerk
United States District Court
Providence, Rhode Island

Matthew W. Goring, Esq.
Hinckley, Allen, Salisbury & Parsons
Industrial Bank Building
Providence 3, Rhode Island

Raymond J. Pettine, Esq.
United States Attorney
211 Federal Building
Providence 3, Rhode Island

Denis G. McInerney, Esq.
Cahill, Gordon, Reindell & Ohl
80 Pine Street
New York 5, New York

Roger T. Clapp, Esq.
Grinnell Corporation
260 West Exchange Street
Providence 1, Rhode Island

Frank A. Fritz, Esq.
Bleakley, Platt, Schmidt, Hart & Fritz
120 Broadway
New York 5, New York

United States v. Grinnell Corporation et al

Civil No. 2785 (D. Rhode Island)

Gentlemen:

In accordance with the Government's request of June 2, and in compliance with the Court's order of June 3, I have directed the Deputy Clerk of this Court, Miss Frances Foley, to set aside Friday, June 12, 1964 for the identification of any documents which anybody desires to have num-

bered. All Government documents will begin with numerals: Ex. 1, Ex. 2, etc. All defendants' documents will begin with letters: Ex. A, Ex. B, etc. From now on there will be adjacent to Courtroom Six a room specially set aside for all identified documents, all admitted exhibits, all pleadings, all depositions, all briefs, and all other physical material relevant to the case.

As I have firmly indicated, the case will begin on Monday, June 15, 1964 and will continue from day to day thereafter until completed.

Sincerely, Charles E. Wyzanski, Jr.

[fol. 402] IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

Civil Action No. 2785

[Title omitted]

NOTICE OF MOTION AND AFFIDAVIT OF DISQUALIFICATION OF HON. CHARLES E. WYZANSKI, JR. ON BEHALF OF DEFENDANTS AMERICAN DISTRICT TELEGRAPH COMPANY, HOLMES ELECTRIC PROTECTIVE COMPANY AND AUTOMOTIVE FIRE ALARM COMPANY OF DELAWARE—Filed June 9, 1964

To: Raymond J. Pettine, Esq.
United States Attorney
District of Rhode Island
Attorney for Plaintiff
Federal Building
Providence, Rhode Island

Sir:

Please Take Notice that defendants American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware, by their respective attorneys, upon the annexed affidavit of Ernest Kobelt, Roy W. Cooper and Lawrence W. Thomason sworn to June 8, 1964, hereby move the United States District Court for the District of Rhode Island pursuant to 28 USC Section 144 for an Order of disqualification of the Hon. Charles E. Wyzanski, Jr., on the ground of personal bias

and prejudice, disqualifying said Judge from conducting any further proceedings in this action and for such other [fol. 403] and additional relief as will be just in the premises in order to prevent prejudice to the defendants and to provide a fair trial.

Dated: June 8, 1964.

/s/ Matthew W. Goring, Esq., Attorney for Defendants, American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware, Industrial Bank Building, Providence 3, Rhode Island.

Of Counsel: Bleakley, Platt, Schmidt, Hart & Fritz, 120 Broadway, New York, New York 10005.

[fol 404] Attachment to Notice of Motion

In the United States District Court for the District of Rhode Island

Civil Action No. 2785

United States of America, Plaintiff,

against

Grinnell Corporation, American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware, Defendants.

Affidavit of Disqualification of Hon. Charles E. Wyzanski, Jr.

State of New York,
County of New York, ss:

Ernest Kobelt, Roy W. Cooper and Lawrence W. Thomason each being severally duly sworn, depose and says:

1. They are the Treasurer, Treasurer and Vice-President, respectively of the defendants American District Telegraph Company, Holmes Electric Protective Company and Auto-

matic Fire Alarm Company of Delaware and in behalf of their respective companies make this affidavit in support of defendants' motion to disqualify the Hon. Charles E. Wyzanski, Jr. to whom the within cause was assigned for all purposes by Chief Judge Woodbury of the United States Circuit Court for this Circuit.

2. Deponents believe that the Judge before whom this action is pending, to wit, Hon. Charles E. Wyzanski, Jr. as a personal bias and prejudice against the defendants and in favor of the plaintiff, United States of America, in that he has prejudged the issues and merits and the liability of the defendants in this action prior to the commencement of the trial herein.

[fol. 405] 3. Defendants state that they did not file this affidavit ten days before the beginning of the present term of Court for the reason that knowledge of such bias and prejudice did not come to them until May 28, 1964 and June 3, 1964, and aver that said absence of knowledge is good cause for failure to file the said affidavit within ten days before the beginning of the present term of this Court. This affidavit is accompanied by a certificate of counsel of record that said affidavit and application are made in good faith.

4. The facts and reasons for the belief that such personal bias and prejudice exist are as follows:

a. On December 18, 1963, a pretrial hearing in this matter was held at which two major subjects were discussed, i.e., (i) the future disposition before trial of objections to deposition material, objections to documents, the resolution of all such objections either by agreement, counsel or by Court ruling, the method of excerpting the deposition material for use upon the trial, etc., and (ii) the future consideration by the Court (pursuant to Section H of Article IV of the Handbook of Recommended Procedures for the Trial of Protracted Cases at pp. 46 and 47) after submission by the parties of proposals and briefs of appropriate relief in the case upon the assumption that plaintiff would prevail.

b. The Order made and entered by this Court on December 18, 1963 (a copy of which is attached hereto as Exhibit A) following such pretrial hearing expressly

provided with respect to the latter of such subjects as follows:

[fol. 406] "On a date subsequent to April 13, 1964, subject to the Court's convenience, a Pre-Trial Conference shall be held herein for the primary purpose of discussing the relief which would be appropriate in the event plaintiff prevails."

c. On May 28, 1964 all of the parties, through their respective attorneys, appeared before the Hon. Charles E. Wyzanski, Jr., for a pretrial conference (a copy of the Minutes of such conference is attached hereto as Exhibit B) for the primary purpose of discussing the relief which would be appropriate in the event that the plaintiff prevailed at the trial of the within action. At such conference there was no discussion of the items of relief in the event that the plaintiff did prevail at trial. Instead, the Hon. Charles E. Wyzanski, Jr., before whom the trial of the within action is scheduled, by the following remarks made it abundantly clear that he intends to give the defendants' evidence short shrift; that he has prejudged the issues and the merits of the action and has formed an opinion as to the final outcome of the trial and the relief which is to be afforded to the government before any real evidence has been introduced:

"Mr. McInerney. Your Honor, at our last pretrial conference we discussed devoting this pretrial conference primarily to the question of relief. If your Honor will recall——

The Court. Is there any use in my talking about it? Are you near enough so that I can do anything? Or hadn't I just better hold the trial and get it over with? It is not going to take very long. I know that.

[fol. 407] Mr. McInerney. Your Honor, it won't take very long for the plaintiff's case to go in.

The Court. Nor for the defendants' either, I assure you.

Mr. McInerney. Well, if I may respectfully disagree——

The Court. You may disagree but I will decide it."

* * * * * * *

"Mr. McInerney. Well, your Honor, I think it would help both the plaintiff and the defendants to know what is really at stake here in this trial.

The Court. I assure you that you would not be helped by anything I would say. You would do better to get together with the government rather than run the risk of what I would say from what I have seen. Let me just assure you of that. And I mean every word, and you can underline that four times.

Mr. McInerney. We had in addition to that purpose, your Honor, a purpose that had to do with the possibility that there might be a trial and that this procedure would not result in a consent decree and that was the narrowing of the issues or the elimination of some of the issues in this case.

The Court. The case is set for trial Monday, June 15th, the government to proceed.

Mr. McInerney. Your Honor——

[fol. 408] The Court. There is no use in discussing it with me. I have read enough to know that if I have to decide this case on what I have seen from the government you will not be in a position at this stage to agree to it."

d. Upon notices of motion dated June 1, 1964 with affidavits of their attorneys attached, the defendants moved this Court for a continuance of the trial of the action for a period of not less than two months in order to allow the defendants an adequate and reasonable time to complete final trial preparation and for an Order narrowing the issues to be tried at the trial of the action. Such motion came on to be heard before the Hon. Charles E. Wyzanski, Jr., on June 3, 1964 (a copy of the Minutes of such hearing is attached hereto as Exhibit C) and was denied. At the hearing the said Hon. Charles E. Wyzanski, Jr., by the following additional remarks made it further abundantly clear that he has prejudged the issues and merits of the action and has formed an opinion with respect to the prosecution and ultimate outcome and relief in this case:

"The Court. * * * I can't understand frankly why you don't realize that you have forced me to look at the

documents in this case, which I dislike doing in advance of trial. You have invited me, therefore, into what I regard as, from your point of view, a rather undesirable situation. I think I made that clear at the beginning. I have told you that, forced by you to look, my views are more extreme than those of the government; [fol. 409] and I have also made you realize that if I am required to make Findings and reach Conclusions I am opening up third-party suits that will make, in view of the size of the industry, the percentage of people involved higher than in the electrical cases. Is that clear?"

* * * * * * *

The Court. * * *
Now anyone who looks at this record will say that Mr. Story did not exaggerate by one jot the situation."

5. From the foregoing deponents believe and submit that the Hon. Charles E. Wyzanski, Jr., has developed and formed an opinion and view with respect to the facts, merits and prosecution of the within action which is in his own words "more extreme than those of the government." That said Judge Wyzanski has stated on the record in this case that if he is ultimately "required to make Findings and reach Conclusions * * * [he will open] up third-party suits that will make, in view of the size of the industry, the percentage of people involved higher than in the electrical cases"; i.e., he has concluded in advance of the trial herein that the defendants are liable.

6. These comments, together with Judge Wyzanski's other remarks hereinabove quoted, prove beyond any reasonable doubt, deponents submit, that the said Judge Wyzanski has prejudged this action prior to the com- [fol. 410] mencement of the trial; has become more partisan than the plaintiff herein against the defendants and has formed a personal bias and prejudice against the defendants and in favor of the plaintiff, United States of America, and should be disqualified from conducting any further proceedings in this action including the trial thereof.

Wherefore, defendants request that the Hon. Charles E. Wyzanski, Jr., proceed no further with this cause but that

said Judge disqualify himself therefrom and for such other and further relief in the premises as may be just and proper.

Ernest Kobelt, Roy W. Cooper, Lawrence W. Thomason, Matthew W. Goring, Esq., Counsel of Record for the defendants American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware, hereby certifies that the above application and affidavit are made in good faith. Matthew W. Goring.

Sworn to and subscribed before me this 8th day of June, 1964 [Seal].

Joseph R. Carrieri, Notary Public, State of New York, No. 03-0580725, Qualified in Bronx County, Commission Expires March 30, 1965.

Dated: Providence, Rhode Island, June 9, 1964.

[fol. 410a] CLERK'S NOTE:

Exhibit A to the Affidavit of Ernest Kobelt, et al.—"Order of Wyzanski, J., dated December 18, 1963" is omitted from the record here. It is printed at page 209 supra.

[fol. 410b] CLERK'S NOTE:

Exhibit B to the Affidavit of Ernest Kobelt, et al.—"Transcript of pretrial conference held in USDC for the District of Massachusetts, Boston, May 28, 1964" is omitted from the record here. It is printed at page 348 supra.

[fol. 410c] CLERK'S NOTE:

Exhibit C to the Affidavit of Ernest Kobelt, et al.—"Transcript of hearing on motions held in USDC for the District of Massachusetts, Boston, June 3, 1964" is omitted from the record here. It is printed at page 377 supra.

[fol. 411] [File endorsement omitted.]

[fol. 412] IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

Civil Action No. 2785

[Title omitted]

PETITION and AFFIDAVIT—Filed June 9, 1964

STATE OF RHODE ISLAND,
County of Providence, ss:

Clarence H. Rison, being duly sworn, deposes and says:

1. I am a Vice President of defendant Grinnell Corporation ("Grinnell") and respectfully submit this affidavit in support of Grinnell's petition that the Honorable Charles E. Wyzanski, Jr. (who was assigned to this case by Chief Judge Peter Woodbury of the United States Court of Appeals for the First Circuit in March of 1962) disqualify himself and proceed no further herein, except to request that another Judge be assigned to preside at the trial of this action. This affidavit is made on information and belief based on my examination of the transcripts of pretrial conferences and hearings held herein on December 18, 1963, May 28, 1964 and June 3, 1964, as well as related documents.

[fol. 413] 2. At the December 18, 1963 conference, plaintiff's counsel proposed a further pretrial conference in about two months' time for the purpose of obtaining rulings on admissibility of evidence in advance of trial (Tr., Dec. 18, 1963, p. 10). Counsel for defendants suggested that, prior to such rulings there should be a pretrial conference devoted to a discussion of the relief sought by the plaintiff as recommended by the "Handbook of Recommended Procedures for the Trial of Protracted Cases", adopted by the Judicial Conference of the United States in March 1960, 25 F.R.D. 351, 398 (Tr., Dec. 18, 1963, pp. 14-16). The Court replied:

> "* * * if I understand the suggestion in its full scope, it is really an invitation to the Court to participate in a discussion of relief without addressing itself to the merits." (Tr. pp. 16-17)

Counsel for defendants answered that they would be willing to enter into such a discussion on an assumption of liability (Tr. p. 17), and the Court thereafter summarized the procedure as follows:

> "In other words, I think what is reasonable to do under the circumstances is to allow all parties to have an awareness of how far the Court would be likely to go if the facts were as strong as the government says they are." (Tr. p. 23)

3. That same day, in accordance with the Court's direction, the parties agreed on a briefing schedule and the Court entered an order containing that schedule and concluding that, at an unspecified date after April 13, 1964, a pretrial conference would be held "for the primary pur-
[fol. 414] pose of discussing the relief which would be appropriate in the event plaintiff prevails". On Febraury 14, 1964, plaintiff submitted its proposed form of judgment, which went far beyond the prayer for relief in the complaint, along with a brief stating its views as to the liability of the defendants. On April 6, 1964, the defendants submitted briefs on relief and proposed changes in plaintiff's proposed form of judgment. In doing so, defendants expressly restated their understanding of the procedure to be followed (*i.e.*, that there would be an *arguendo* assumption that plaintiff could establish a case) and implicitly demonstrated their confidence in the Court's ability to consider the relief aspects of this case without pre-judging its merits.

4. By letter dated May 4, 1964, the Court set May 28, 1964 as the date for the pretrial conference. On that date, however, the Court expressed doubt whether there was any use in any discussion of relief, and stated it knew that the trial would not take very long (Tr. p. 7). When Grinnell's counsel stated his belief that it would help both sides if the Court would indicate its views of what relief might be appropriate, so that the parties would know what would be at stake in a trial, the following colloquy took place:

> "The Court. I assure you that you would not be helped by anything I would say. *You would do better*

to get together with the government rather than run the risk of what I would say from what I have seen. Let me just assure you that. And I mean every word, and you can underline that four times.

[fol. 415] "Mr. McInerney. We had in addition to that purpose, your Honor, a purpose that had to do with the possibility that there might be a trial and that this procedure would not result in a consent decree and that was the narrowing of the issues or the elimination of some of the issues in this case.

"The Court. The case is set for trial Monday, June 15th, the government to proceed.

"'Mr. McInerney. Your Honor——

"The Court. There is no use in discussing it with me. I have read enough to know that if I have to decide this case on what I have seen from the government you will not be in a position at this stage to agree to it." (Tr., May 28, 1964, pp. 9-10)

5. The Court had given no prior notice of this peremptory trial date, and counsel for both sides suggested that there were further pretrial procedures to be dealt with (Tr. p. 10). The Court concluded the conference with the statement:

"No delays, postponements or further method of avoiding the impact of this Court. The 15th of June." (Tr., May 28, 1964, p. 11)

6. As soon as possible thereafter, defendants moved for an order postponing the trial date and limiting the issues to be tried herein to those framed by the pleadings for the purpose of determining whether the relief requested in the complaint should be granted. The Court held a hearing on that motion on June 3, 1964, in the course of which it made the following statements to defendants' counsel:

"The Court. Yes. I can't understand frankly why you don't realize that you have forced me to look at the documents in this case, which I dislike doing in advance of trial. You have invited me, therefore,

[fol. 416] into what I regard as, from your point of view, a rather undesirable situation. I think I made that clear at the beginning. I have told you that, forced by you to look, my views are more extreme than those of the government; and *I have also made you realize that if I am required to make Findings and reach Conclusions I am opening up third-party suits that will make, in view of the size of the industry, the percentage of people involved higher than in the electrical cases.* Is that clear?

"Mr. McInerney. Yes, your Honor. I would like to make clear from the defendants' point of view, your Honor, that your Honor's statement seems to give some status to government demands that are far beyond what the complaint requests.

"The Court. I am not going to engage in any bargaining or discussion with you. I am not going to limit anything at this stage, not a thing." (Tr., June 3, 1964, pp. 19-20, emphasis added)

7. The following day, June 4, the Court issued this order:

"The motion of the defendants filed on June 2, 1964 is denied. The motion of the defendants to limit the relief available to the Government is denied,—the Court itself when it makes its findings of fact and conclusions of law will frame the relief, and accepts no limitations except those appropriate to judicial action; it refuses to bargain with anyone with respect to how the Court will exercise its judicial power."

8. The foregoing record clearly indicates that the Court has already reached a firm conviction concerning the merits of this case and whether any relief should be awarded to the Government herein. The Court has stated that, if it is required to try this case, relief of some kind will be granted to plaintiff. Moreover, it has indicated that it will order relief more drastic than what is requested in the complaint, and even beyond plaintiff's more extreme proposed form of judgment herein, thus indicating the extent of the Court's conviction on the subject of liability.

[fol. 417] 9. It may be that the Court has reached these conclusions as a result of the "relief pretrial" procedure, which would seem to have inherent in it hazards to the possibility of a fair trial unless such proceedings are conducted circumspectly and kept within the boundaries of the issues framed by the pleadings and prior proceedings. Our understanding of that procedure was that the Court would assume liability on defendants' part, but *only* for the purposes of pretrial discussions looking toward obtaining a tentative indication from the Court of the relief that would then be appropriate. Instead, it now appears that the Court has concluded that any trial of this case will result in a finding of liability.

10. This motion is made with greatest respect for this Court and the United States District Judge presiding. We have reluctantly concluded that it is our disagreeable duty to call the Court's attention to the state of mind in which it is about to judge defendants because due process requires that the trial be conducted by a judge who can and will accord defendants the presumption of innocence to which they are entitled. We deeply regret this turn of events because we do not believe the Court's attitude on the merits of this case, as reflected in its remarks on the record, has resulted from any bias or prejudice which existed prior to the Court's accepting assignment to this case in 1962, or even prior to this year. Instead, we believe the Court's convictions have resulted inadvertently from the very pretrial procedures defendants themselves proposed. Nevertheless, the fact remains that the Court's pre-judgment of this matter is tantamount to prejudice.

[fol. 418] Wherefore, Grinnell Corporation respectfully submits that the Honorable Charles E. Wyzanski, Jr., in order to assure defendants of a fair trial, should voluntarily disqualify himself and proceed no further with this case except to request the assignment of a new judge for purpose of trial.

Clarence H. Rison.

Sworn to before me this 9th day of June, 1964, in Providence, R. I.

Matthew W. Goring, Notary Public.

As counsel of record for defendant Grinnell Corporation, I hereby certify that this motion and affidavit are made in good faith and in the interest of justice.

Roger T. Clapp.

Sworn to before me this 9th day of June, 1964, in Providence R. I.

Matthew W. Goring, Notary Public.

[fol. 419] [File endorsement omitted.]

[fol. 420] IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

C.A. (R.I.) No. 2785

[Title Omitted]

Wyzanski, a D.J.

Transcript of hearing on motions—Boston, Mass., June 9, 1964

APPEARANCES:

Noel E. Story, Esq., counsel for plaintiff.

Denis G. McInerney, Esq. and Frank A. Fritz, Esq., counsel for defendants.

[fol. 421] The Court. A motion having been filed, pursuant to the provisions of Title 28 of the United States Code, section 144, I take the following action. The section in question recites that whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the Judge before whom the matter is pending has a personal bias or prejudice, either against him or in favor of any adverse party, such Judge shall proceed no further therein but another Judge shall be assigned to hear such proceeding.

This is a case which was assigned to me by Chief Judge Woodbury, and is a case pending in the District of Rhode Island. The only regular Judge of that District, Judge Day, is disqualified by his own statement. Thus the matter of my disqualification must be referred back to Chief Judge Woodbury who I know will find it appropriate to take action before Monday next. If I am disqualified in the light of Judge Woodbury's opinion I shall of course not conduct the hearing on Monday next. If he concludes that for any reason whatsoever the motion is invalid I shall proceed as planned on Monday next. Application may be made to him forthwith. He is in New Hampshire.

[fol. 422] IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

Civil Action No. 2785

REQUEST TO ADMIT—Filed June 11, 1964

To: Raymond J. Pettine, Esq.
United States Attorney
District of Rhode Island
Attorney for Plaintiff
Federal Building
Providence, Rhode Island

Sir:

Pursuant to Rule 36 of the Federal Rules of Civil Procedure defendant Grinnell Corporation requests plaintiff to admit for the purpose of this action that either:

1. The United States Patents listed in Column A of the attached schedule (a) were applied for and issued on the dates shown in Columns B and C of such schedule, (b) indicate as their owner the persons or corporations shown in Column E of such schedule, and (c) contain at least the number of claims shown in Column D of such schedule relating to furnishing central station sprinkler supervisory and waterflow alarm service, or apparatus, devices, combinations, methods or processes useful in furnishing such service; or

[fol. 423] 2. The patents and patent applications which were the subject of the agreements of February 18, 1904 and April 29, 1907 in issue herein were in conflict with each other at the time of the 1907 agreements, so that (a) the practice of any party's patents or patent applications relating to central station sprinkler supervisory and waterflow service or apparatus, devices, combinations, methods or processes useful in furnishing such service would have entailed infringement or substantial risk of infringement by such party of patents issued or to be issued to another party or parties, and (b) a license under such patents and patent applications of the other parties was necessary to permit each party, without substantial risk of infringement of patents of other parties and attendant litigation, to em-

ploy all its own inventions in rendering such service, as well as to employ the inventions of other parties in rendering such service.

Copies of the patents listed in the attached schedule will be made available to plaintiff's counsel on request.

Dated: June 9, 1964.

Roger T. Clapp, Esq., Attorney for Defendant, Grinnell Corporation, 260 West Exchange Street, Providence, Rhode Island.

Of Counsel: Cahill, Gordon, Reindel & Ohl, 80 Pine Street, New York, New York 10005.

[fol. 424] ATTACHMENT TO REQUEST TO ADMIT

	A	B	C	D	E
	Patent No.	Filing Date	Issue Date	No. of Pertinent Claims	Owner*
1	544,894	August 13, 1888	August 20, 1895	7	G. F. E.
2	869,415	Nov. 16, 1986	Oct. 29, 1907	1	G. F. E.
3	578,077	Dec. 17, 1896	March 2, 1897	12	B. A. F. A.
4	909,985	August 2, 1897	Jan. 19, 1909	5	G. F. E.
5	708,155	March 1, 1898	Sept. 2, 1902	3	G. F. E.
6	898,823	March 1, 1898	Sept. 2, 1902	3	G. F. E.
7	677,072	April 24, 1899	June 25, 1901	10	G. F. E.
8	783,418	May 12, 1899	Feb. 28, 1905	8	G. F. E.
9	817,911	July 11, 1899	April 17, 1906	8	G. F. E.
10	792,258	July 11, 1899	June 13, 1905	6	G. F. E.
11	688,304	March 28, 1900	Dec. 10, 1901	10	G. F. E.
12	688,305	March 28, 1900	Dec. 10, 1901	9	G. F. E.
13	904,441	April 21, 1900	Nov. 17, 1908	29	C. F. A.
14	903,152	May 10, 1900	Nov. 3, 1908	13	G. F. E.
[fol. 425]					
15	660,727	May 21, 1900	Feb. 12, 1901	23	A. F. A.
16	659,855	June 5, 1900	Oct. 16, 1900	3	G. F. E.
17	903,153	April 9, 1901	Nov. 3, 1908	6	G. F. E.
18	818,999	Sept. 4, 1901	April 24, 1906	7	G. F. E.
19	882,250	Feb. 27, 1902	March 17, 1908	6	A. D. T.
20	805,874	Sept. 11, 1902	Nov. 28, 1905	4	J. G. Nolen J. D. Nolen
21	802,573	Sept. 11, 1902	Oct. 24, 1905	12	C. F. A.
22	878,012	Dec. 23, 1902	Feb. 4, 1908	3	J. G. Molen F. B. Cook
23	922,320	Feb. 2, 1903	May 18, 1909	5	J. G. Nolen

	A	B	C	D	E
	Patent No.	Filing Date	Issue Date	No. of Pertinent Claims	Owner*
24	978,709	April 30, 1903	Dec. 13, 1910	37	C. F. A.
25	967,113	April 30, 1903	August 9, 1910	14	C. F. A.
26	933,197	May 4, 1903	Sept. 7, 1909	14	J. G. Nolen
[fol.] 426					
					F. B. Cook
27	963,432	May 23, 1903	July 5, 1910	31	A. F. P.
28	938,859	May 29, 1903	Nov. 2, 1909	22	R. B. Hewitt
					J. G. Nolen
					F. B. Cook
29	955,056	August 15, 1903	April 12, 1910	4	C. F. A.
30	1,056,637	August 15, 1903	March 18, 1913	15	C. F. A.
31	846,502	Sept. 24, 1903	March 12, 1907	6	J. G. Nolen
					F. B. Cook
32	939,292	Sept. 24, 1903	Nov. 9, 1909	7	J. G. Nolen
					F. B. Cook
33	846,336	Dec. 12, 1903	March 5, 1907	13	A. F. P.
34	770,754	Jan. 11, 1904	Sept. 27, 1904	6	P. F. E.
35	840,311	Feb. 6, 1904	Jan. 1, 1907	7	A. F. P.
36	841,743	Feb. 17, 1904	Jan. 22, 1907	3	B. A. F. A.
37	978,629	Feb. 26, 1904	Dec. 13, 1910	13	J. G. Nolen
38	946,257	Feb. 29, 1904	Jan. 11, 1910	9	J. G. Nolen
[fol. 427]					
					F. B. Cook
39	883,665	March 3, 1904	March 31, 1908	12	J. G. Nolen
					F. B. Cook
40	878,013	March 11, 1904	Feb. 4, 1908	11	A. F. P.
41	830,254	April 25, 1904	Sept. 4, 1906	20	J. E. Shepherd

	A	B	C	D	E
	Patent No.	Filing Date	Issue Date	No. of Pertinent Claims	Owner*
42	939,293	April 25, 1904	Nov. 9, 1909	17	J. G. Nolen J. E. Shepherd
43	946,258	April 25, 1904	Jan. 11, 1910	8	A. F. P.
44	808,451	May 31, 1904	Dec. 26, 1905	15	A. D. T.
45	840,375	July 30, 1904	Jan. 1, 1907	15	A. F. P.
46	828,046	Sept. 6, 1904	August 7, 1906	6	A. F. P.
47	828,047	Sept. 6, 1904	August 7, 1906	3	A. F. P.
48	962,660	Sept. 6, 1904	June 28, 1910	2	A. F. P.
49	828,045	Sept. 17, 1904	August 7, 1906	20	A. F. P.
50	863,533	Oct. 21, 1904	August 13, 1907	3	A. F.P.
[fol. 428]					
51	860,560	Oct. 23, 1904	July 16, 1907	3	A. F. P.
52	792,237	Dec. 2, 1904	June 13, 1905	6	A. F. A.
53	860,605	Dec. 8, 1904	July 16, 1907	4	A. F. P.
54	802,875	March 20, 1905	Oct. 24, 1905	14	J. G. Nolen J. E. Shepherd
55	913,041	March 20, 1905	Feb. 23, 1909	16	J. E. Shepherd
56	819,231	Sept. 13, 1905	May 1, 1906	14	C. F. A.
57	896,839	Sept. 18, 1905	August 25, 1908	11	C. F. A.
58	831,634	Sept. 23, 1905	Sept. 25, 1906	12	C. F. A.
59	927,377	Oct. 4, 1905	July 6, 1909	7	J. D. Nolen J. E. Shepherd
60	912,432	Oct. 12, 1905	Feb. 16, 1909	8	C. F. A.
61	967,633	Jan. 22, 1906	August 16, 1910	4	A. F. P.
62	851,775	Feb. 3, 1906	April 30, 1907	7	A. F. A.

	A	B	C	D	E
	Patent No.	Filing Date	Issue Date	No. of Pertinent Claims	Owner*
[fol. 429]					
63	944,575	Feb. 26, 1906	Dec. 28, 1909	12	J. E. Shepherd
64	948,738	March 8, 1906	Feb. 8, 1910	12	J. E. Shepherd
65	896,864	May 7, 1906	August 25, 1908	11	C. F. A.
66	896,840	Sept. 1, 1906	August 25, 1908	4	C. F. A.
67	896,841	Sept. 1, 1906	August 25, 1908	3	C. F. A.
68	886,879	Sept. 17, 1906	May 5, 1908	9	J. E. Shepherd
69	1,041,273	Oct. 18, 1906	Oct. 15, 1912	1	G. F. E.
70	883,447	Dec. 15, 1906	March 31, 1908	10	A. D. T.
71	932,753	Jan. 17, 1907	August 31, 1909	6	A. D. T.
72	996,335	April 6, 1907	June 27, 1911	4	R. B. Hewitt J. G. Nolen
73	969,393	May 9, 1907	Sept. 6, 1910	9	J. E. Shepherd
74	955,472	May 31, 1907	April 19, 1910	6	J. E. Shepherd
75	957,968	Oct. 5, 1907	May 17, 1910	4	A. D. T.
76	933,173	Jan. 13, 1908	Sept. 7, 1909	6	G. F. E.
[fol. 430]					
77	933,193	Jan. 13, 1908	Sept. 7, 1909	12	G. F. E.
78	1,018,451	Jan. 20, 1908	Feb. 27, 1912	15	A. F. P.
79	941,048	Feb. 13, 1908	Nov. 23, 1909	6	J. E. Shepherd
80	998,299	May 3, 1908	July 18, 1911	13	A. F. P.
81	907,600	May 11, 1908	Dec. 22, 1908	11	A. D. T.
82	927,414	Sept. 14, 1908	July 6, 1909	2	C. F. A.
83	998,588	Sept. 3, 1909	July 18, 1911	6	A. F. P.
84	1,090,237	Dec. 30, 1909	March 17, 1914	11	G. F. E.

	A	B	C	D	E
	Patent No.	Filing Date	Issue Date	No. of Pertinent Claims	Owner*
85	1,056,495	Nov. 19, 1910	March 18, 1913	13	A. F. P.
86	1,075,421	Jan. 27, 1913	Oct. 14, 1913	17	A. D. T.

* The following abbreviations refer to the persons indicated:

G.F.E.—General Fire Extinguisher Co., now known as Grinnell Corporation.
B.A.F.A.—Boston Automatic Fire Alarm Co.
C.F.A.—Consolidated Fire Alarm Co.
A.F.A.—Automatic Fire Alarm Co.
A.D.T.—American District Telegraph Co.
A.F.P.—Automatic Fire Protection Co.
P.F.E.—Phoenix Fire Extinguisher Co.

[fol. 431] Affidavit of Service [omitted in printing.]

[fol. 432] [File endorsement omitted.]

[fol. 433] Received Jun 10, 10.08 a.m. '64, U.S. Marshal's Office, Dist. of R.I.

CIVIL SUBPOENA TO PRODUCE DOCUMENT OR OBJECT

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

Marshal's Civil No. 2302

Civil Action File No. 2785

UNITED STATES OF AMERICA, Plaintiff,

vs.

GRINNELL CORPORATION, AMERICAN DISTRICT TELEGRAPH COMPANY, HOLMES ELECTRIC PROTECTIVE COMPANY and AUTOMATIC FIRE ALARM COMPANY OF DELAWARE, Defendants.

By Raymond J. Pettine, Esq.
United States Attorney
District of Rhode Island
Attorney for Plaintiff
Federal Building
Providence, Rhode Island 02904

You are hereby commanded to appear in the United States District Court for the District of Rhode Island at U.S. Court House, Rm. 1506, in the city of Boston, Massachusetts, on the 15th day of June, 1964, at 9:30 o'clock a.m. to testify on behalf of the defendants in the above entitled

action and bring with you the papers described in Appendix A annexed hereto.

June, 1964.

Cahill, Gordon, Reindel & Ohl, Attorney for Defendant, Grinnell, 80 Pine Street, N.Y., N.Y. 10005.

Neale D. Murphy, Clerk. By ——, ——, Deputy Clerk.

RETURN ON SERVICE

Received this subpoena at Providence, R.I. on June 10, 1964, and on June 10, 1964, at U.S. Attorney's Office, Providence, R.I., served it on the within named Raymond J. Pettine at 4:30 p.m. by delivering a copy to him and tendering to him the fee for one day's attendance and the mileage allowed by law [1] in the amount of $11.20.

Joseph V. Conley, U.S. Marshal. By George S. Douglas, Chief Deputy.

Dated: June 10, 1964.

Service Fees:

Travel	none
Services	$ 2.00
Witness fee	11.20
Total	$13.20

Subscribed and sworn to before me, a — this — day of —, 19—.

——, ——.

Note.—Affidavit required only if service is made by a person other than a United States Marshal or his deputy.

[fol. 433a] [File endorsement omitted.]

[1] Fees and mileage need not be tendered to the witness upon service of a subpoena issued in behalf of the United States or an officer or agency thereof. 28 USC 1835.

Appendix A

1. Memorandum prepared by Bernard Wahrmann in or about July 1953 analyzing the information submitted by Grinnell Corporation in answer to the Department of Justice's request for information and described in plaintiff's answers to defendants' interrogatories Nos. 140-141.

2. Any Department of Justice memoranda in plaintiff's possession, custody or control describing, summarizing, relating or referring to the conference held July 10, 1953 at the Department of Justice which was attended by Messrs. Roger Clapp and Frank A. Fritz, including the memoranda which are summarized in plaintiff's answers to defendants' interrogatories Nos. 145 and 147.

3. Any Department of Justice memoranda in plaintiff's possession, custody or control which were based upon information submitted to the Department of Justice by defendant American District Telegraph Company in or about March 1955, including the memorandum prepared by Mr. William McPike in or about March 1955 and described in plaintiff's answer to defendants' interrogatory No. 150.

4. Any Department of Justice memoranda in plaintiff's possession, custody or control summarizing, describing, relating or referring to the March 18, 1955 conference at the Department of Justice attended by Messrs. Ephraim Jacobs, William H. McManus, William McPike, Roger Clapp and Frank A. Fritz, including the memoranda summarized in plaintiff's answer to defendants' interrogatory No. 157.

5. Any other memoranda or other documents in plaintiff's possession, custody or control relating to the Department of Justice's July 23, 1953 decision not to object to Grinnell Corporation's acquisition of American District Telegraph Company, and the Department of Justice's July 14, 1955 decision not to take any action with respect to American District Telegraph Company's acquisition of General Alarm Corporation of Boston, Massachusetts.

6. Any memoranda or other documents in plaintiff's possession, custody or control referring to, relating to or summarizing the conferences held at the Department of Justice between Messrs. Roger Clapp and Frank A. Fritz and representatives of the Antitrust Division on May 24 and June 28, 1955, respectively.

[fol. 435] IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

Civil No. 2785

[Title omitted]

STIPULATION No. 6—June 11, 1964

It Is Hereby Stipulated and Agreed by and between counsel for the Plaintiff, United States of America, and Defendants Grinnell Corporation, American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware that:

1. The six page chart derived from information obtained from depositions taken in this action, entitled "Subscribers and Revenue—Electric Protective Service Other than Accredited Central Station Service 1957-1962" attached to this stipulation is true and correct in every respect, and shall be admissible into evidence as proof of the facts stated therein. This chart includes only information summarized from depositions taken in this action, and does not purport to show the total amount of Electric Protective Service other than Accredited Central Station Service in the United States or in all cities where defendant alarm companies may furnish central station service. The figures for the [fol. 436] year 1962 are incomplete in that they are not available for all companies examined.

2. The three page chart entitled "Central Station Burglar Alarm Service Subscribers Certificated by Underwriters' Laboratories, Inc. 1957-1961" attached hereto is true and correct in every respect, and shall be admissible into evidence as proof of the facts stated therein. The revenue figures shown thereon are total burglar alarm central station revenue as shown on Stipulation No. 5.

June 11, 1964.

Frank A. Fritz, Jr., Bleakley, Platt, Schmidt, Hart & Fritz, Attorneys for Defendants, American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware. Denis G. McInerney, Cahill, Gordon,

Reindel & Ohl, Attorneys for Defendant, Grinnell Corporation. Noel E. Story, Trial Attorney, Antitrust Division, United States Department of Justice, Attorney for Plaintiff.

[fol. 437] IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

Civil No. 2785

[Title omitted]

STIPULATION No. 8—June 11, 1964

It is hereby stipulated and agreed by and between counsel for the Plaintiff, United States of America, and Defendants Grinnell Corporation, American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware that the figures set forth below accurately represent for each of the years 1957-1961, inclusive, the percentages of central station burglar alarm subscribers having Underwriters' Laboratories, Inc. certificates, and shall be admissible into evidence as proof of the facts stated therein.

	1957	1958	1959	1960	1961
ADT	39.63	39.98	40.09	39.62	39.02
Holmes	55.31	55.04	53.96	53.10	52.89
Non-Defendant	31.36	29.93	28.33	28.46	28.18

June 11, 1964.

Frank A. Fritz, Jr., Bleakley, Platt, Schmidt, Hart & Fritz, Attorneys for Defendants, American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware. Denis McInerney, Cahill, Gordon, Reindel & Ohl, Attorneys for Defendant, Grinnell Corporation. Noel E. Story, Trial Attorney, Antitrust Division, United States Department of Justice, Attorney for Plaintiff.

[fol. 438] IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

Civil No. 2758

[Title omitted]

STIPULATION No. 9—June 11, 1964

It is hereby stipulated and agreed by and between counsel for the Plaintiff, United States of America, and Defendants Grinnell Corporation, American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware, that in 1961, 24 non-defendant companies which furnished approved central station electric protective service also furnished local alarm service to 16,559 subscribers, such service producing revenue of $1,610,385.00.

June 11, 1964.

Frank A. Fritz, Jr., Bleakley, Platt, Schmidt, Hart & Fritz, Attorneys for Defendants, American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware. Denis McInerney, Cahill, Gordon, Reindel & Ohl, Attorneys for Defendant, Grinnell Corporation. Noel E. Story, Trial Attorney, Antitrust Division, United States Department of Justice, Attorney for Plaintiff.

[fol. 439]

Attachment to Stipulation No. 6

Subscribers and Revenue—Electric Protective Service Other Than Accredited Central Station Service 1957—1962 Source—Depositions

Company	City	Service	1957 Subscribers	1957 Revenue	1958 Subscribers	1958 Revenue	1959 Subscribers	1959 Revenue	1960 Subscribers	1960 Revenue	1961 Subscribers	1961 Revenue	1962 Subscribers	1962 Revenue
Ace of Spades	Pittsburgh	Local	165	$ 17,838	154	$ 18,787	145	$ 20,565	154	$ 20,910	154	$ 23,600	153	$ 10,909
		Remote	11	1,968	10	1,824	11	2,004	11	2,004	11	2,004	11	1,002
		C/S							4	1,188	5	1,544	5	822
Ace Alarm (Weco)	Indianapolis	Local					33		40	11,321				
		C/S					6		9				16	5,904
Alarm Engineering	Kansas City	C/S B A											7	622
		Local							68	10,000	134	10,000	200	10,000
Alarm Systems, Inc.	Kansas City	Local							250	24,000	300	28,800		
Alert Alarm	Cleveland	Local								69,109		75,812	41	
Arrow Electric	Gary, Ind.	C/S		47,978		51,206		57,273					310	
		Local											50	
		Local & C/S												
Arrow Metal (Tattle-Tale)	Baltimore	C/S									3			
		Local									6			
Automatic Alarm	Detroit	Local		114,520		120,166		137,953		151,641		160,866	300	42,000
		Remote											50	21,600
		Auxiliary											4	
		C/S											200	68,400
[fol. 440]														
Bay Alarm	Oakland	Local	500	$ 60,000	550	$ 70,000	600	$ 80,000	650	$ 85,000	700	$ 72,000		
		Remote	72		79		86		93		100	13,500		
		TAS									40	4,500		
Bell Burglar Alarm	Philadelphia	Local	400	45,000	500	55,000	600	65,000	700	75,000	800	85,000	1,000	$ 100,000
		C/S											10	
California Burglar Alarm	San Francisco	Local	300	40,000	350	43,355	400	46,690	450	50,025	500	53,360		
		Remote	150	20,000	150	21,645	150	23,310	150	24,975	150	26,640		
Central Burglar Alarm Service	Los Angeles	Local	1,180	106,200	1,200	108,000	5,000	540,000	5,000	540,000	2,500	225,000		
		TAS									50			
		SS WF									5			
Circle Alarm Corp.	Indianapolis	C/S									50	12,000		
Dallas Burglar Alarm	Dallas	Local	150	15,494	165	15,928	196	19,205	253	23,592	300	29,195		
Day & Night Burglar Alarm	San Francisco	Local	500	48,525	600	51,022	700	52,561	715	57,104	700	55,000		
Frontier Guard	Denver	Local									20	11,250		
		C/S									50			
[fol. 441]														
Gerber & Co.	Glendale, Cal.	Local	535	$ 40,729	559	$ 40,828	565	$ 49,019	566	$ 51,753	525	$ 54,751		
		Remote									14			
		C/S									40			
Guardian Alarm	Detroit	Local	975	102,000	1,025	103,100	1,075	104,200	1,125	105,300	1,175	108,400	1,200	$ 107,500
		C/S	100	18,000	105	18,900	110	19,800	115	20,700	120	21,600	125	22,500
Merchants Alarm Service	St. Louis	Local	500	40,000	500	38,000	500	38,000	500	38,000	500	38,000		
Republic Alarm Co.	San Jose	Local	307	45,000	416	61,000	477	70,000	402	59,000	375	55,000		
		Remote		8,000		9,000	29	10,000	32	11,000	35	12,000		
		C/S								20,000	110	33,000		
Safeway Alarm	Cleveland	Local	70	3,500	65	3,400	60	3,300	55	3,200	42	3,000		
Security Alarm Co.	Cleveland	Local	225	14,661	203	13,229	192	12,470	227	14,800	350	22,780		
Nordsiek Sentinel	Indianapolis	Local	140	8,322	140	8,390	140	9,084	140	10,358	140	11,000		
H. S. Smith & Son	Washington, D.C.	Local		20,000							17	10,095		
		TAS												

[fol. 442]

Company	City	Service	1957 Subscribers	1957 Revenue	1958 Subscribers	1958 Revenue	1959 Subscribers	1959 Revenue	1960 Subscribers	1960 Revenue	1961 Subscribers	1961 Revenue	1962 Subscribers	1962 Revenue
United States Burglar Alarm	Los Angeles	Local			2,126	$ 177,000	2,504	$ 172,000	2,250	$ 170,000	2,000	$ 168,000		
		C/S			64	19,500	101	26,006	150	30,000	208	35,000		
Kedzie-Kane	Chicago	Local	72	$ 5,059	78	5,511	82	5,638	81	5,988	79	6,242		
		Remote	3	355	19	1,868	37	4,078	50	6,553	69	9,685		
Morse	Cleveland	Local	2,107	17,333	2,023	18,350	1,931	16,983	1,915	16,173	1,921	15,341		
		Remote B A	1	35	3	118	3	118	3	118	3	118		
		Remote F A	2	107	3	134	3	142	3	142	3	142		
		Auxiliary	130	6,287	152	7,259	163	7,849	180	8,952	205	10,092		
Denver Fire Rep.	Denver	Local	279	2,234	209	2,277	312	2,895	316	2,772	298	3,005		
Merchants Police	Milwaukee	Local	69	7,360	74	8,290	76	8,814	133	18,247	175	25,700		
Morse	Los Angeles	Local					2,211	198,242	2,305	205,751	2,587	227,287		
Pacific Fire Ext.	San Francisco	Local	646	43,179	629	44,819	613	48,965	570	54,547	567	55,781		
		Remote F A	43	28,690	53	36,342	57	42,008	63	46,410	69	53,103		
		Auxiliary	276	134,014	283	143,590	280	152,487	277	162,317	275	169,055		
Protection Engineering	Los Angeles	Proprietary	1	120	1	120	1	120	1	120	1	120		
		Auxiliary	5	2,236	6	2,534	7	2,834	7	3,470	9	5,804		

[fol. 443]

American Fire Dispatch	Los Angeles	Local	6	$ 468	20	$ 1,632	24	$ 2,136	45	$ 3,720	69	$ 5,962		
		Remote B A	46	13,398	50	17,796	122	38,100	149	45,558	182	62,214		
		Remote F A	2	516	1	300	1	708	6	1,848	6	2,100		
Electro-Protective	Newark	Local									1,550	157,049		
Automatic Alarm	Minneapolis	Local	535	83,153	534	79,390	547	84,566	567	84,466	582	84,455		
		Remote B A	4	621	4	630	6	1,098	9	2,048	10	2,558		
		Remote F A							1	540	1	540		
Smith Detective Agency	Dallas	Local	175	16,758	177	17,021	267	31,423	398	43,959	378	46,130		
Alarm Signal Co.	Houston	Local	1	156	1	156	2	240	6	660	12	1,778		
		Remote F A	9	3,720	9	3,720	11	5,700	20	13,415	25	25,144		
American Alarm	Indianapolis	Local	85	8,536	83	8,306	103	10,263	98	9,784	100	10,001		
National Protective Corp.	Baltimore	Local	1,061	162,628	1,188	175,222	1,330	221,780	1,488	230,821	1,665	258,358		
Chicago Local Companies	(Summary)	Local		311,451		310,117		317,476		334,896		334,896		
Central Office Alarm Co.	New York City	Local			210	9,232	208	12,435	1,908	65,228	1,908	65,228		
Owl Burglar Alarm	New York City	Local	1,406	130,522	1,484	137,861	1,880	160,136	1,767	169,765	1,706	169,765		
General Burglar Alarm	New York City	Local		48,690		48,170		49,197	1,244	42,552	1,244	42,552		
Calls Police	Boston	Local	1,860	125,281	1,827	127,471	1,759	135,162	1,762	135,902	1,680	131,098		
Potter	St. Louis	Local	49	3,588	50	3,831	76	6,711	79	6,927	83	6,914		

Attachment to Stipulation No. 6

[fol. 444]

Subscribers Central Station Burglar Alarm Service Certificated by Underwriters' Laboratories, Inc. 1957–1961 Source: Depositions

Company	Subscribers 1957	U.L. Certificates 1957	Revenue 1957	Subscribers 1958	U.L. Certificated 1958	Revenue 1958	Subscribers 1959	U.L. Certificates 1959	Revenue 1959	Subscribers 1960	U.L. Certificates 1960	Revenue 1960	Subscribers 1961	U.L. Certificates 1961	Revenue 1961
Albany Prot. Serv.	133	30	$ 22,805.01	147	38	$ 25,303.71	161	47	$ 27,667.56	171	51	$ 31,087.16	182	34	$ 35,393.00
Alarm Signal Co.				2		376.80	3		580.80	5	0	1,000.00	7	0	1,504.80
American Alarm Co.	297		71,409.06	336		80,718.72	374		89,749.74	425	5	102,205.02	469	13	112,780.41
American Fire Dispatch	46		13,398.00	50		17,796.00	122		38,100.00	149	0	45,558.00	182	4	62,214.00
Automatic Alarm Co.	29	0	10,098.44	46	6	16,079.76	71	8	28,616.89	112	15	48,196.84	164	27	67,329.40
Call's Police	45	18	11,590.00	97	40	24,497.89	148	58	46,356.25	198	84	71,715.88	266	126	100,631.57
Central Alarm Phoenix	59	15	22,500.20	68	18	30,901.88	114	31	43,719.72	152	34	64,702.44	178	56	76,678.44
Central Alarm Tucson							24	7	8,313.70	28	6	9,740.24	34	11	11,609.06
Central Alarm Honolulu	96	24	41,533.67	116	21	57,415.12	137	19	74,270.19	157	22	99,280.32	176	19	138,100.65
Central Office Alarm Co.										39	1	4,715.00	128	11	30,845.00
Central Station Alarms													42	3	15,240.00
Central Station Signals	216	39	57,311.00	236	62	75,750.00	348	47	101,589.00	526	117	143,524.00	846	144	174,060.00
Central Watch Service	848	308	462,998.88	948	334	529,990.44	1033	375	591,536.88	1077	407	624,236.52	1150	453	679,562.28
Dayton Electronics		14		158	36	41,974.55	203	74	61,264.87	250	94	73,386.57	246	117	92,259.25
Denver Fire Reporter	401	96	181,960.11	473	112	182,299.49	600	162	211,432.86	586	200	272,088.77	560	243	264,932.26
Electro Protective Corp.		0		159	5	50,132.00	265	16	73,156.00	340	28	98,764.00	538	49	168,847.00

[folio 445]

Company	City	Service	1957 Subscribers	1957 Revenue	1958 Subscribers	1958 Revenue	1959 Subscribers	1959 Revenue	1960 Subscribers	1960 Revenue	1961 Subscribers	1961 Revenue	1962 Subscribers	1962 Revenue
Damon	Kansas City	C/S					117	$ 7,839	121	$ 8,764	126	$ 10,136		
Dayton Electronics	Dayton	Local									148	16,380	148	$ 16,380
General Burglar Alarm	Philadelphia	Local	1,353	$ 125,543	1,332	$ 123,722	1,561	132,165	1,913	183,775	1,927	191,722	1,963	191,889
Newark District Telegraph Co.	Newark	Local	470	37,517	470	35,719	470	37,125	470	34,656	470	33,060	470	
Albany Protective Service	Albany	Local	102	7,638	106	7,592	103	7,589	103	7,461	94	8,021		
Michigan Still Alarm	Detroit	Local			290	36,215	300	41,229	294	39,858	296	43,582	280	43,265
Central Watch Service	Chicago	Local	5	592	7	904	11	1,303	17	1,889	27	3,093	42	4,413
		Remote	4	828	4	828	8	1,908	16	3,558	33	7,337	30	8,314
	Tucson	Local					275	19,171	290	23,283	310	32,988		
Central Alarm	Boston	Local	692	34,041	735	39,248	786	47,033	830	53,736	840	55,402		
Hyde Park Alarm		Remote	20	3,600	24	4,300	28	5,000	30	5,400	36	6,500		
		TAS	16	4,200	22	5,800	37	9,800	37	9,800	64	16,900		
											800	94,000		
Cooperative Burglar Alarm	Chicago	Local												
Victor Burglar Alarm	Clifton, N.J.	Local	2,451	154,927	2,641	166,963	2,860	194,469	2,651	164,322	2,739	166,836	2,862	177,080
		Remote							397	49,085	428	54,892	570	75,600
	Totals		19,906	2,343,116	23,833	2,682,638	32,348	3,632,805	36,729	3,989,216	38,029	4,191,763	10,057	908,200

Company	Subscribers 1957	U. L. Certificates 1957	Revenue 1957	Subscribers 1958	U.L. Certificates 1958	Revenue 1958	Subscribers 1959	U. L. Certificates 1959	Revenue 1959	Subscribers 1960	U. L. Certificates 1960	Revenue 1960	Subscribers 1961	U. L. Certificates 1961	Revenue 1961
[fol. 446]													169	16	40,918.68
National Protective Corp.	207	48	74,700.00	221	62	76,400.00	234	67	84,700.00	312	68	100,700.00	338	61	113,100.00
Federal Engineering Corp.													22	2	10,884.00
Fidelity Protective	2		596.00	6		1,592.00	8	0	3,508.00	17	4	6,673.00	24	4	8,862.00
Granite State Alarm	139	40	46,198.22	178	47	61,185.10	208	48	72,527.49	229	51	83,831.88	254	54	95,053.30
Kedzie-Kane	393	172	149,621.83	417	203	164,056.90	449	222	183,705.27	511	239	206,221.40	565	280	230,392.41
McCane-Sondock	149	67	71,085.22	168	79	83,166.74	200	76	96,341.32	238	74	111,520.44	246	85	120,860.00
Merchants Police		8		254	9	116,004.50	306	14	140,727.00	344	16	160,786.68	374	20	176,465.20
Michigan Still Alarm	849	149	25,100.00	783	150	26,425.00	706	113	27,143.25	620	113	30,941.00	532	101	29,454.25
Morse Signal Devices—Cleveland							347	56	126,002.73	436	79	159,893.55	610	116	229,361.63
Morse Signal Devices—L.A.	793	447	362,083.00	817	444	368,923.00	836	469	395,023.00	875	457	409,292.00	892	461	423,764.00
Newark District Tel. Co.	814	535	240,684.00	829	539	258,620.00	896	529	267,180.00	905	538	289,120.00	940	565	301,060.00
Owl Prot. Co. Inc.	364	10	86,098.00	365	9	89,300.00	360	9	97,169.80	332	9	110,229.75	339	11	110,264.52
Pacific Fire Ext. Co.	291	0	44,887.94	278	7	64,526.69	288	13	69,172.30	319	84	77,408.01	327	70	78,674.90
Potter El. Sig. Co.—Cinn.	546	155	216,211.45	574	172	232,522.31	635	179	259,726.33	602	120	264,223.74	703	151	316,380.73
Potter El. Sig. Co.—St. Louis	1	0	192.00	8	0	1,316.37	11	0	4,769.80	18	0	5,853.87	26	0	10,965.37
Protection Alarms	52	7	18,121.29	71	5	26,275.54	94	13	36,783.30	121	14	48,720.72	131	15	55,141.59
Protection Engineering Co.	142		64,321.50	158		70,401.80	174	0	74,323.30	184	5	89,900.00	206	9	99,543.00
Reliance Protective															
[fol. 447]													344	249	202,063.24
Rhode Island Electric Protective	316	236	167,083.73	312	237	175,996.40	318	232	186,472.98	325	236	190,860.23	166	79	75,429.66
Robinson El. Supv. Co.		0		17	4	8,753.80	70	23	34,889.40	127	61	57,419.66	48	15	67,912.08
Sentinel										20	1	15,448.32	800	53	239,880.84
Smith D. A.	638	49	191,265.85	660	43	198,076.07	690	49	207,229.55	767	45	230,176.45			
	7,866	2,467	$2,653,854.40	8,962	2,682	$3,156,778.58	10,433	2,956	$3,763,749.28	11,517	3,278	$4,339,421.46	13,224	3,727	$5,068,358.23

[fol. 448] [File endorsement omitted.]

[fols. 449-450] IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

Civil Action No. 2785

BEFORE THE CHIEF JUDGE OF THE FIRST CIRCUIT OF THE UNITED STATES

UNITED STATES OF AMERICA, Plaintiff,

v.

GRINNELL CORPORATION, AMERICAN DISTRICT TELEGRAPH COMPANY, HOLMES ELECTRIC PROTECTIVE COMPANY AND AUTOMATIC FIRE ALARM COMPANY OF DELAWARE, Defendants.

MEMORANDUM—June 11, 1964.

Woodbury, Ch. J. In March, 1962, I designated and assigned District Judge Charles E. Wyzanski, Jr., of the United States District Court for the District of Massachusetts, to hear and decide this case, District Judge Day of the United States District Court for the District of Rhode Island, before whom the case was originally pending, having disqualified himself. Judge Wyzanski held pre-trial hearings and otherwise proceeded in the matter making preliminary decisions.

On June 9, 1964, the defendants filed motions and affidavits of bias and prejudice against Judge Wyzanski under Title 28 U.S.C. §144. Judge Wyzanski declined to act and referred the matter to me as the one who had designated and assigned him to hear the case.

After hearing counsel today, June 11, at length and examining the papers submitted by the parties, I find and rule as follows:

Insofar as the affidavits of bias and prejudice are concerned, I find them insufficient in law and fact.

Insofar as the affidavits invoke what supervisory power I may have to designate and assign another Judge in Judge Wyzanski's place, I find no adequate basis for concluding that Judge Wyzanski is disqualified by bias and prejudice to proceed further in the case.

[File endorsement omitted.]

Approved: Peter Woodbury, Ch. J.

[fol. 451] IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 2785

[Title omitted]

Transcript of Hearing on Motion To Quash Subpoena Duces Tecum Directed To Raymond J. Pettine, United States Attorney for the District of Rhode Island—Boston, Mass., June 15, 1964.

APPEARANCES:

Noel E. Story, Esq. and Hugh P. Morrison, Jr., Esq., Anti-trust Division, counsel for the plaintiff.

Denis G. McInerney, Esq., Roger T. Clapp, Esq. and Gerald C. Van Cise, Esq., counsel for the defendant Grinnell Corporation.

Frank A. Fritz, Esq., Frank A. Fritz, Jr., Esq., Matthew W. Goring, Esq., Robert L. Conkling, Esq. and Averill M. Williams, Esq., counsel for the defendants American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware.

[fol. 452] The Court: All right. Motion To Quash Subpoena Duces Tecum Directed to Raymond J. Pettine, United States Attorney for the District of Rhode Island.

Gentlemen, who is going to argue this motion?

Mr. Morrison: I am, your Honor.

The Court: Please do so.

Mr. Morrison: Your Honor, the Motion To Quash filed by the Government is directed at two subpoenaes. We originally thought that there was one subpoena with these two riders. We found later that there were two subpoenaes. So with this motion I would like to move to quash both subpoenaes on the grounds stated in the motion.

The Court: You may proceed.

Mr. Morrison: The question presented here is simply this. The defendants, about nine months following the cut-off date for discovery established by this Court, commanded the production of virtually all of the documents and

files of the Department of Justice which in any way relate to the investigation of the electric protection industry.

As we are all aware, this case was filed in April of 1961, and the parties have had three years in which to discover this material. On January 10, I believe, your Honor stated that discovery would be completed by September 1st. Thus, the parties have had about eight months' notice of the time [fol. 453] when discovery would be completed. I think at that same date——

The Court: You have not mentioned the year.

Mr. Morrison: 1963. On the same date I believe your Honor tentatively set the trial for late 1963. The defendants then have had more than adequate time in which to obtain this information, and now, literally on the eve of trial are commanding the production of an unknown number of documents, which cover at least a 14-year period. In this context, your Honor, the Government feels that the motion is clearly oppressive and unreasonable and should be quashed.

These broad subpoenaes I believe were served on the 10th of June, five days before the trial date, and we feel that they are nothing more than a continuation of the delaying tactics and harassment that they have employed throughout this case.

Furthermore, your Honor, there has been no showing of good cause why the subpoenaes should be issued. There is no indication that there has been any material discovered since the discovery cut-off date that they did not know before the cut-off date. There is no showing that the documents are even relevant and material.

In addition, I would just point out briefly that the subpoenaes on their face call for documents which would appear to be privileged, and they call for complaints against [fol. 454] defendants by unnamed competitors, by unnamed subscribers, and also call for the work product of the attorneys engaged in the preparation of this case.

With respect to the non-defendant companies listed on the subpoenaes, all of these companies have been deposed and in fact the defendants' notice of deposition——

The Court: There is no such verb as that used that way.

Mr. Morrison: I am sorry. The depositions of most of these or all of these companies have been taken, and many

of these were noticed by the defendants themselves. They have had every opportunity to examine these witnesses, these companies, concerning the statements they are talking about or request in these subpoenaes.

The Government does not intend to call any live witnesses. The defendants have known this for many months. In fact, they have asserted before the Court that they were aware of the fact that we would not call any live witnesses.

Therefore, your Honor, the Government feels that there are no facts here which give rise to the purpose of a trial subpoena. We do not presently know the volume of documents involved. We haven't had a chance to check. It is [fol. 455] clearly an unreasonable and burdensome request.

The Court: Does anyone want to speak in opposition to the motion?

Mr. Fritz: I should like to be heard, sir.

The Court: All right. You may go ahead, Mr. Fritz.

Mr. Fritz: I think frankly this subpoena is much too broad, your Honor, but I at least had an underlying purpose in asking for the issuance of a subpoena with respect to one aspect of this case that I think your Honor will give serious attention to. There is a list attached to this subpoena of the non-defendant companies, the officers of whom in all cases have been examined by the Government and by us in the course of our discovery proceedings. Some of those depositions contain matters which those who testified at least seemed to think were of an improper—acts of an improper character on the part of at least one of my defendants. The depositions are before this Court.

I felt that if any of those people had made prior statements to the Government, we ought to be able to see those prior statements to the Government, and it is only in connection with possible prior inconsistent statements that I ask for the permission to see these documents to see wheth- [fol. 456] er or not they throw some light upon the truth or untruth of the allegations made. And that is really the breadth of the subpoena for which I am asking relief.

The Court: Does anybody else wish to be heard?

Mr. McInerney: If I may, your Honor, on behalf of the Grinnell Corporation. I have not received a copy of the Government's Motion To Quash and I am not at all clear from——

The Court: Well, it was briefer than the oral argument.

Mr. McInerney. Thank you, your Honor. I gather from the oral argument that the Government has not segregated the grounds on which they are moving to quash Grinnell's subpoena from the grounds on which they are moving to quash the subpoena served by the Alarm Companies.

The Court: They were not aware, as they said, at the time the motion was filed that there were two subpoenaes, but they now have made clear by oral amendment that they intended to include those subpoenaes within the scope of their motion.

Mr. McInerney: Well, a number of Government's counsel's remarks, your Honor, could not possibly be addressed to our subpoena because we have only asked for in effect the Government's memoranda of meetings that were held [fol. 457] by counsel representing Grinnell with the Government in 1953, and the memoranda are specifically described in the appendix to the subpoena, because we know that they exist as a result of Answers to Interrogatories which Judge Sweeney ordered on January 23, 1962, at which time whatever the grounds on which the Government relies, I think he ruled on them, because he said that the defendants are entitled to have all of the evidence in the hands of the Department which bear upon this issue, that is, the issue of the so-called clearances or the Government's review of and acquiescence in Grinnell's acquisition of ADT in 1953. The questions are relevant to the affirmative defense and should be answered. They are not within the category of executive privilege since the 1953 and 1955—and that, your Honor, refers to the second clearance of ADT's acquisition of an Alarm Company in Boston—"since the 1953 and 1955 dealings culminated in a disclosure of a decision tentative though it may have been on the question raised by the defendants."

I won't burden your Honor with reading further. Judge Sweeney's decision has been reported and it has been followed by at least one District Court in Texas and I submit, your Honor, in brief that it is the law of this case.

The Court: The motions, written and oral, are granted [fol. 458] in full. Neither subpoena need be compiled with. This Court adopts as separate and independent grounds each of the different reasons given by the Government in

support of its motions. Furthermore, this Court regards Judge Sweeney's ruling as in no sense binding upon it. Whatever may be the merits of Judge Sweeney's ruling no action during the period of years was taken before me after the case was assigned before me for the implementation of the ruling. The ruling has become moot, not having any force ex proprio vigore. The ruling of Judge Sweeney is only, so far as I am concerned, advisory and, if you will, a precedent. It is not the law of the case. Even if I myself had made the ruling, it is the kind of ruling which can be and should be altered if circumstances make it appropriate so to do.

In this case, all discovery was to have been completed nine months ago. This Court intends rigorously to adhere to its more than timely warning to counsel.

Mr. Story: Your Honor, shall the Government proceed?

The Court: If you are ready.

Mr. Story. First, your Honor——

Mr. Fritz: May it please the Court, before the Government proceeds may I with your Honor's permission note [fol. 459] on the record in behalf of the defendants whom I represent our objection to proceeding to trial on this day of June the 15th, 1964 upon the ground that we have not been provided with an adequate opportunity to do the final preparatory work for trial within the period which your Honor has assigned to us, namely, the period between May 28th, 1964 and this date, on the first date, being the date which your Honor advised us the case would proceed to trial on this date, and I respectfully by reference incorporate in support of my notation on this record——

Is your Honor addressing——?

The Court: No. I was motioning to your co-counsel to sit down until you had finished.

Mr. Fritz: Then I will sit down.

The Court: No. I was not telling you to sit down.

Mr. Fritz: I understand. I wish to incorporate in support of my statement the matters which are contained in my affidavit in which I asked the Court for two months' postponement and supporting our reasons we thought to be sufficient for an extension of time for that period. I simply want to make it plain on the record that notwithstanding that we made this formal application before your Honor on

June 3rd, and it was denied, I wish to preserve my position on this record.

[fol. 460] The Court: I have no objection to the notation. I have a strong objection to the misrepresentation. This Court set the matter for November, 1963 and has from time to time postponed it to meet the convenience of counsel.

You may proceed.

Mr. McInerney: Your Honor, I simply wish the record to note that Grinnell joins in the statement of counsel for the defendant Alarm Companies, simply noting for the record our exception to this trial date, and I am sure from your Honor's remarks this is to be denied, but I just want it noted for the record, if your Honor please.

The Court: The notation is made. The same comment is made by me, that the case was set for November, 1963, and that was seven months ago.

[fol. 461] Reporter's Certificate to foregoing transcript omitted in printing.